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Defendant SHAKEY'S PIZZA ASIA  
VENTURES, INC. and Third Party Defendants  
CINCO CORPORATION, PC  
INTERNATIONAL PTE LTD., and SPAVI  
INTERNATIONAL USA, INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SHAKY'S PIZZA ASIA VENTURES,  
INC, a Philippines corporation,  
  
Plaintiff,

v.

PCJV USA, LLC, a Delaware limited  
liability company; PCI TRADING, LLC, a  
Delaware limited liability company; GUY  
KOREN, an individual; POTATO  
CORNER LA GROUP, LLC, a California  
limited liability company; NKM CAPITAL  
GROUP, LLC, a California limited liability  
company; J & K AMERICANA, LLC, a  
California limited liability company; J&K  
LAKEWOOD, LLC, a California limited  
liability company; J&K VALLEY FAIR,  
LLC, a California limited liability  
company; J & K ONTARIO, LLC, a  
California limited liability company; HLK  
MILPITAS, LLC, a California, limited  
liability company; GK CERRITOS, LLC, a  
California, limited liability company; J&K

Case No. 2:24-CV-04546-  
SB(AGR<sub>x</sub>)

*The Hon. Stanley Blumenfeld, Jr.*

**SECOND AMENDED**  
**JOINTLY FILED CLAIMS,**  
**COUNTERCLAIMS, THIRD**  
**PARTY CLAIMS, AND**  
**AFFIRMATIVE DEFENSES**  
**TO BE TRIED**

Complaint Filed: —May 31,  
2024  
Trial Date: August 18~~26~~<sup>26</sup>, 2025

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~~JOINTLY FILED CLAIMS TO BE TRIED~~  
SECOND  
AMENDED JOINTLY FILED CLAIMS,  
COUNTERCLAIMS, THIRD PARTY CLAIMS, AND  
AFFIRMATIVE DEFENSES TO BE TRIED

CASE NO. 2:24-CV-04546-SB(AGR<sub>x</sub>)

1 PC TRUCKS, LLC, a California limited  
2 liability company; and, GK CAPITAL  
3 GROUP, LLC, a California limited liability  
company and DOES 1 through 100,  
inclusive,

4 Defendants.

5  
6 PCJV USA, LLC, a Delaware limited  
liability company; PCI TRADING LLC, a  
7 Delaware limited liability company;  
POTATO CORNER LA GROUP LLC, a  
8 California limited liability company; GK  
CAPITAL GROUP, LLC, a California  
9 limited liability company; NKM CAPITAL  
GROUP LLC, a California limited liability  
10 company; and GUY KOREN, an  
individual,

11 Counter-Claimants,

12 v.

13 SHAKEY'S PIZZA ASIA VENTURES,  
14 INC, a Philippines corporation,

15 Counter Defendant.

16 PCJV USA, LLC, a Delaware limited  
liability company; PCI TRADING LLC, a  
17 Delaware limited liability company;  
POTATO CORNER LA GROUP LLC, a  
18 California limited liability company; GK  
CAPITAL GROUP, LLC, a California  
19 limited liability company; NKM CAPITAL  
GROUP LLC, a California limited liability  
20 company; and GUY KOREN, an  
individual,

21 Third Party Plaintiffs,

22 v.

23 PC INTERNATIONAL PTE LTD., a  
24 Singapore business entity; SPAVI  
INTERNATIONAL USA, INC., a  
25 California corporation; CINCO  
CORPORATION, a Philippines  
26 corporation; and DOES 1 through 10,  
27 inclusive,

Third Party Defendants.

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1 - Pursuant to Dkt. No. 254, the parties submit the following causes of action,  
2 counterclaims, third party claims, and affirmative defenses as at issue for trial.  
3 ~~SPAVI further notes that two of its entries in this document are longer than one~~  
4 ~~paragraph. With respect to those notes, given their rarity herein, and given the~~  
5 ~~number of pleadings disputing those elements themselves, the disagreements abiu~~  
6 ~~what can or cannot be presented therein have been extensive and cannot easily be~~  
7 ~~consolidated into one paragraph while communicating the same layered issues.~~  
8 ~~SPAVI apologizes to this Court and assures this Court it was not meant as a sign of~~  
9 ~~disrespect, but, rather a sign of the importance of those elements at issue.~~

10 **I. PLAINTIFF SHAKEY'S PIZZA ASIA VENTURE'S INC. ("SPAVI"**  
11 **OR "PLAINTIFF"); CLAIMS TO BE TRIED BY A JURY.**

12 **1) Claim 1: Trademark Infringement Against All Entity Defendants**

13 (15 U.S.C. § 1114), regarding the three registered marks at issue: (1) U.S. Reg.  
14 No. 5900257: the word mark "Potato Corner" ("Word Mark"); (2) U.S. Reg. No.  
15 6088456 protecting "World's Best Flavored French Fries (the "Slogan Mark"); and  
16 (3) U.S. Reg. No. 3760041 (the "Logo Mark") protecting: 

17 a. Element No. 1: the Word Mark, Slogan Mark, and/or the Logo  
18 Mark (all collectively, the "Marks") are valid and protectible  
19 trademarks:

20 1. This element is not disputed

21 b. Element No. 2: Plaintiff owns the Word Mark, Slogan Mark,  
22 and/or the Logo Mark

23 1. This element is disputed.

24 2. Nature of Dispute: Legal and Factual

25 3. Plaintiff's Legal Position: Defendants do not dispute that  
26 the registrations for all three Marks (Trial Exhibit Nos. 1,  
27 3, and 5) identify Cinco as the registrant and the first to use

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each of the three Marks, nor do Defendants dispute that the Deeds of Assignment attached to the notices filed with the USPTO (Trial Exhibit Nos. 4 and 6) confirm that, unequivocally and without exception, the entirety of these Marks were sold and assigned to Plaintiff, along with all the goodwill arising out of or associated with the Marks. Defendants also do not dispute the testimony of Seller (Cinco) and Buyer (SPAVI) that the Deeds are accurate in every way, that the sale and assignments were comprehensive, without carve outs, and fully consummated. Instead, Defendants take internally inconsistent positions that are contradicted by various legal doctrine, including: **(1) Licensee Estoppel**, wherein PCJV (as well as all other Defendants that operate or own a business using the Marks), as a licensee of Cinco (and subsequently SPAVI) through the implied license or even the unsigned Master License Agreement claimed by Defendants to be binding “may not set up any adverse claim in it as against its licensor.” *Pac. Supply Co-op. v. Farmers Union Cent. Exch. Inc.*, 318 F.2d 894, 908 (9th Cir. 1963). **(2) The Lanham Act provisions rendering Defendants’ positions contrary to federal law**, in that Defendants’ attempts to claim that the first time they used the Marks should be credited to them, even though they were acting as licensees of PCJV or Defendants’ claim of ownership of the goodwill created through PCJV’s stores (operated as licensees) inured to Defendants’ benefit

contradicts 15 USC § 1055 (as well as the unsigned Master License Agreement they claimed to be adhering to this whole time). **(3) Law of the case**, in that Defendants' challenge to Plaintiff's ownership of the Marks based on Defendants' first use as licensee of Cinco has already been resolved by this Court and the Ninth Circuit, which held that "it is undisputed that Cinco registered the three marks at issue then transferred ownership of those marks to SPAVI." The Ninth Circuit then explicitly rejected PCJV's theories that it was the first to use the marks domestically by holding that "in the licensor-licensee context, a licensee's use of a trademark inures to the benefit of the licensor-registrant" (*Shakeys Pizza Asia Ventures, Inc. v. PCJV USA, LLC*, No. 24-7084, 2025 WL 1431270, at \*1 (9th Cir. May 19, 2025)), thus rendering, for example, any allegation by PCJV of its use as a licensee as being proof of its first use cannot serve as a basis to challenge SPAVI's ownership because this theory has been considered and rejected by the Ninth Circuit in this case, as has also the various other legal theories of Defendants offered during the injunction stage that are based on the same facts asserted during the injunction and rejected by this Court. Even at the injunction stage, rulings by this Court and the Ninth Circuit "on pure issues of law, however, are binding." *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agr.*, 499 F.3d 1108, 1114 (9th Cir. 2007); see, e.g. *Arizona v. California*, 460

U.S. 605, 618 (1983) (citing the rule as being “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case”). **(4) Authorities cited by Defendants do not support their position, including *Sengoku***, which presented a distinguishable case – a foreign manufacturer that was the first to use versus the domestic distributor that was the registrant, whereas in this case the foreign licensor is both the first to use and the registrant – and yet, Defendants continue to cite it as supporting their claim of ownership or rights, and it does not. **(5) The merger doctrine**, wherein the purchase and sale agreement between Cinco and SPAVI selling and agreeing to assign to SPAVI the Potato Corner marks and brand merge into the undisputed and unequivocal deeds that are notarized and ratified by Buyer and Seller (Trial Exhibit Nos. 4 and 6) such that these Deeds would control if there was any inconsistency between the purchase and sale agreement and the deed (there is not, as those agreements said nothing about and acknowledged no rights held by any of the Defendants), such that Defendants’ speculative theory that the purchase and sale agreement between Cinco and SPAVI reserved some rights for Defendants cannot even be presented to the jury given that the Deeds do not reserve anything for Defendants – a doctrine that applies in federal intellectual property cases and renders any questions as to what the deal between SPAVI and Cinco actually said,



1 irrelevant. *See, e.g., Palos Verdes Corp. v. Hous. Auth. of*  
2 *Los Angeles Cnty.*, 202 Cal. App. 2d 827, 836 (1962)  
3 (explaining that “if the language of a deed is plain, certain,  
4 and unambiguous, neither parol evidence nor surrounding  
5 facts and circumstances will be considered to add to,  
6 detract from, or vary its terms or to determine the estate  
7 conveyed); *B. F. Goodrich Co. v. A. T. I. Caribe, Inc.*, 366  
8 F. Supp. 464,467 (D. Del. 1973) (applying this concept in  
9 the intellectual property context). **(6) Standing**, in that  
10 none of the Defendants were party to the transaction  
11 between Cinco and Plaintiff, and as such, have no standing  
12 to question whether the Deeds (notarized and ratified)  
13 represent the actual deal between Cinco and SPAVI or  
14 some other imagined reservation of their rights supposedly  
15 contained in the purchase and sale agreement that did not  
16 make it into the Deeds (a fantasy that did not happen). *See,*  
17 *e.g. Imperial Residential Design, Inc. v. Palms Dev. Grp.,*  
18 *Inc.*, 70 F.3d 96, 99 (11th Cir. 1995) (agreeing that “that,  
19 where there is no dispute between the copyright owner and  
20 the transferee about the status of the copyright, it would be  
21 unusual and unwarranted to permit a third-party infringer  
22 to invoke [the requirement of a writing memorializing the  
23 status] to avoid suit for copyright infringement.”). **(7)**  
24 **Judicial estoppel**, in his sworn allegations in the Prior  
25 Governance Action (*Cinco Corporation et. al. v. Guy*  
26 *Koren et. al.* Los Angeles Superior Court Case No.  
27 BC701075), Koren admitted repeatedly including in

verified allegations that Cinco “owned the Potato Corner brand” (Trial Exhibit No. 1421, ¶ 26), an allegation that Cinco admitted (Trial Exhibit, No. 1422, ¶ 26.), such that PCJV and Koren must be barred from making a “factual assertion” that Cinco did not own the brand “which directly contradicts an earlier assertion made in the same proceeding or a prior one.” *United States v. Lence*, 466 F.3d 721, 726 (9th Cir. 2006) (citing and quoting *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir.1990)).

4. Defendants’ Position Statement: The ownership issues framed by the Proposed Final Pretrial Conference Order (Dkt. No. 244), the Memoranda of Contentions of Law and Fact (Dkt. Nos. 197 and 199) and pleadings are: (1) senior use under *Sengoku*, including actual first use (restructure in 2009) and lawful first use, *see CreAgri, Inc. v. USANA Health Services, Inc.*, 474 F3d 626, 630 (9th Cir. 2007); (2) continuous use under 15 U.S.C § 1055; (3) assignment in gross; (4) acquisition of “attached” rights by the PCJV USA Parties and Plaintiff’s corresponding denial of acquiring burdens attached to the trademarks; (5) naked license; and (6) priority favoring Defendants based on other defenses. Plaintiff’s proffered statement is non-responsive. It is a combative, inappropriate and false narrative of Defendants’ position, record evidence, preliminary rulings and the ownership issues for trial as set forth in the Proposed Final Pretrial Conference Order (Dkt. No. 244), Memorandums of Contentions of Law and Fact

(Dkt. Nos. 197 and 199) and pleadings. “The court’s preliminary injunction did not make final factual determinations; no party moved for summary judgment; and the jury needs to be instructed on the claims asserted in this case.” Dkt. No. 254 at 2. Plaintiff’s unpled defenses of infringer standing, licensee estoppel, judicial estoppel, and merger (parol evidence) doctrine are not issues for trial per the Proposed Final Pretrial Conference Order (Dkt. No. 244) or Plaintiff’s Memorandum of Contentions of Law and Fact (Dkt. No. 199). Plaintiff’s asserted “legal positions,” which seek to avoid a trial on the merits, are also based on inapplicable authority (or no authority at all) and misstate the record. For these reasons, including because Plaintiff’s “legal positions” go beyond identifying the actual ownership issues set for trial, Defendants will address them if or when they arise after the evidence on ownership is presented at trial

5. Plaintiff’s Supporting Evidence: Notarized Deeds signed by seller and buyer; USPTO filings including Registrations and Assignments, testimony of Gregorio (Plaintiff’s CEO), Magsaysay (Cinco’s CEO), Koren, Ybanez (Plaintiff’s General Counsel), FDDs, Franchise Agreements.

6. Defendants’ Supporting Evidence: documents and testimony including and related to (1) Defendants’ senior use and quality control of Potato Corner in the United States; (2) the superseding partnership agreement; (3) DLA Piper’s notification of Cinco Corporation’s unlawful use of

Potato Corner in the United States; (4) the State of California's Department of Business Oversight's Order sanctioning PCJV USA, LLC for Cinco Corporation's alleged prior use of Potato Corner in the United States; (5) the superseding and restructure agreement confirmed by Guy Koren and Jose Magsaysay vesting ownership of Potato Corner in their partnership; (6) the joint venture agreement vesting co-ownership of Potato Corner in the United States in PCJV USA, LLC; (7) control over Potato Corner in the United States being vested with and exercised by PCJV USA, LLC; (8) Potato Corner USA being affixed to Potato Corner in the United States; (9) consumer association of Potato Corner in the United States with PCJV USA, LLC, to whom complaints, if any, were lodged; (10) PCJV USA, LLC's creation, development and hold over the goodwill of Potato Corner in the United States for over a decade; (11) absent a license agreement, which SPAVI Parties disavow, PCJV USA, LLC's use inured to its own benefit; (12) Cinco Corporation's lack of control of Potato Corner in the United States for over a decade; (13) Defendants' objection to Plaintiff's alleged acquisition of U.S. trademark rights in breach of Cinco Corporation's fiduciary duties and PCJV USA, LLC's joint venture agreement ("JVA") and First Amendment thereto ("First Amendment") given that Plaintiff was disavowing the existence of a license agreement; (14) Cinco Corporation assigned U.S. Potato Corner trademarks to

1 Plaintiff without the goodwill associated with the  
2 trademarks; (15) Plaintiff's lack of control of Potato Corner  
3 in the United States after it allegedly acquired the U.S.  
4 trademarks; (16) Defendants' Membership Interest  
5 Purchase Agreement ("MIPA") with Cinco acquiring all of  
6 its Interests in PCJV USA, LLC and all rights "attached"  
7 thereto unencumbered by a need for a license from any  
8 third party; (17) Plaintiff's denial of stepping into Cinco  
9 Corporation's shoes and acquiring the licensing burdens  
10 attached to the U.S. trademarks; and (18) Plaintiff's  
11 suppression of ownership evidence.

12 c. Element No. 3: Defendants used the Word Mark, Slogan Mark,  
13 and/or the Logo Mark in interstate commerce after May 31, 2024:

14 1. This element is undisputed.

15 d. Element No. 4: Defendants' use of the Word Mark, Slogan Mark,  
16 and/or the Logo Mark in interstate commerce after May 31, 2024,  
17 was without the consent of Plaintiff and in a manner likely to  
18 cause confusion among ordinary consumers as to the source,  
19 sponsorship, affiliation, or approval of the services.

20 1. This element is disputed.

21 2. Nature of Dispute: Legal and Factual

22 3. Plaintiff's Legal Position: As for absence of consent, given  
23 the absence of any ownership rights, Defendants must  
24 locate some right as a licensee of the owner (SPAVI).  
25 Defendants offer two documents proffered as agreements  
26 that bind Cinco to a perpetual license. Neither work as a  
27 matter of law. First, they offer the unsigned October 10,

2010, document containing terms for a Master License Agreement (Trial Exhibit No. 11), which this Court (and the Ninth Circuit) have reviewed. Both have interpreted it as a matter of law, concluding that it is an unsigned draft (as Koren’s testimony has confirmed) and illusory because the licensor is given no consideration for this purported agreement. The unsigned document cannot, as a matter of law, have bound Cinco, even through implied contract law, because Cinco did not do anything in furtherance of that document to imply its assent. Moreover, multiple times after October 10, 2010, documents were signed stating that Cinco would be expecting a 30% royalty recovery. Second, Plaintiffs point to § 3(g) of an Amended Joint Venture Agreement (and its predecessor the Joint Venture Agreement) – Trial Exhibit Nos. 8 and 9 – which this Court has already interpreted to constitute an agreement to agree, in the future, with Cinco on a license agreement. As the Ninth Circuit said in affirming this conclusion, “the AJVA contained an agreement to enter a *future* Master License Agreement, not a “perpetual license” like PCJV claims.” *Shakeys Pizza Asia Ventures, Inc. v. PCJV USA, LLC*, No. 24-7084, 2025 WL 1431270, at \*1 (9th Cir. May 19, 2025) (citing *First Nat’l Mortg. Co. v. Fed. Realty Inv. Tr.*, 631 F.3d 1058, 1065 (9th Cir. 2011) (“[A]n ‘agreement to agree,’ without more, is not a binding contract.”)). This interpretation of the AJVA and JVA is a legal conclusion, which, as affirmed by the Ninth Circuit are legal

1 conclusions, and, as such, these are pure conclusions of  
2 law, which means: **this Court's conclusion that § 3(g) of**  
3 **the JVA and AJVA are agreements to agree and do not**  
4 **bind Cinco to a "perpetual license" are law of the case**  
5 **and cannot be disturbed or challenged at trial.** This  
6 theory based on interpretation of a contract has been  
7 considered and rejected by this Court and the Ninth Circuit  
8 in this case, and because it is a "pure issue[] of law,  
9 however, [it is] binding" on Defendants under law of the  
10 case. *Ranchers Cattlemen Action Legal Fund United*  
11 *Stockgrowers of Am. v. U.S. Dep't of Agr.*, 499 F.3d 1108,  
12 1114 (9th Cir. 2007); see, e.g. *Arizona v. California*, 460  
13 U.S. 605, 618 (1983) ((citing the rule as being "when a  
14 court decides upon a rule of law, that decision should  
15 continue to govern the same issues in subsequent stages in  
16 the same case"). Defendants now trot out other theories  
17 such the fact that the JVA and prior Operating Agreement  
18 are still somewhat live under a theory of partial integration,  
19 however, the following point prevails over each of these  
20 contortions: Defendants can point to no agreement or  
21 document, or acct, or statement, binding Cinco to a  
22 perpetual, irrevocable, royalty free licensee of its Marks.  
23 As such, in the absence of any written agreement, or  
24 documentation of any license terms, the sole license that  
25 existed as of May 31, 2024, was implied and terminable at  
26 will See *Pogrebnoy v. Russian Newspaper Distribution,*  
27 *Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*,

742 F. App'x 291 (9th Cir. 2018) (“[A]n implied license, like any other contract, is terminable at the will of either party if it is not for a specified term.”). One final flaw exists in the attempt to bind Cinco to the AJVA, and that is one of issue preclusion in favor of Plaintiffs. As evidenced by Plaintiff’s own Third Amended Complaint (verified) in the Prior Governance Action, the entire pleading is based on the theory that -- and it sought judgment concluding that - - Cinco is an alter ego of the entity that was a 60% member of PCJV. (See Trial Exhibit No. 1421 p. 7:3-14.) Such allegations, having been dismissed, with prejudice, by Koren, render these accusations extinguished, and, as such, Defendants are precluded from alleging them ever again.

Regarding likelihood of confusion, which may be resumed, and the jury may be so instructed “[w]here, as here, “a licensee persists in the unauthorized use of a licensor’s trademark, courts have found that the continued use alone establishes a likelihood of consumer confusion.” *Robert Trent Jones II, Inc. v. GFSI, Inc.*, 537 F. Supp. 2d 1061, 1065 (N.D. Cal. 2008) (citing and quoting *Sun Microsystems v. Microsoft Corp.*, 999 F.Supp. 1301, 1311 (N.D.Cal.1998) (citing *Paisa, Inc. v. N & G Auto, Inc.*, 928 F.Supp. 1009, 1012 n. 4 (C.D.Cal.1996); *Hollywood Athletic Club*, 938 F.Supp. at 614–15 (C.D.Cal.1996)). The Sixth Circuit’s analysis in *Max Rack, Inc. v. Core Health & Fitness, LLC*, 40 F.4th 454, 464 (6th Cir. 2022) is instructive:



1  
2 “A separate body of law has developed for this  
3 distinct claim that a holdover licensee has  
4 continued to use a licensor's mark after their  
5 agreement expired. *See* 4 McCarthy, *supra*, §  
6 25:31 (citing cases). In this context, courts have  
7 jettisoned the usual totality-of-the-  
8 circumstances test in favor of a more  
9 categorical rule: “proof of continued,  
10 unauthorized use of an original trademark by  
11 one whose license to use the trademark had  
12 been terminated is sufficient to establish  
13 ‘likelihood of confusion.’ ” *U.S. Structures, Inc.*  
14 *v. J.P. Structures, Inc.*, 130 F.3d 1185, 1190  
15 (6th Cir. 1997); *ITT Indus., Inc. v. Wastecorp.*  
16 *Inc.*, 87 F. App'x 287, 293 (3d Cir. 2004);  
17 *Gorenstein Enters., Inc. v. Quality Care-USA,*  
18 *Inc.*, 874 F.2d 431, 435 (7th Cir. 1989); *Burger*  
19 *King Corp. v. Mason*, 710 F.2d 1480, 1492–93  
20 (11th Cir. 1983); *Pro. Golfers Ass'n of Am. v.*  
21 *Bankers Life & Cas. Co.*, 514 F.2d 665, 670 (5th  
22 Cir. 1975); *L & L Wings, Inc. v. Marco-Destin,*  
23 *Inc.*, 676 F. Supp. 2d 179, 188 (S.D.N.Y. 2009).  
24 This rule makes good sense when a holdover  
25 licensee blatantly infringes the licensor's mark  
26 by using that mark in the same way as it did  
27 before the agreement expired. Without any need  
28 to tick through factors, it should be obvious that  
consumers will believe, for example, that a  
pizza restaurant remains affiliated with the  
“Little Caesars” chain when a terminated  
franchisee continues to operate the pizzeria as a  
Little Caesars. *See Little Caesar Enters., Inc. v.*  
*Miramar Quick Serv. Rest. Corp.*, 2020 WL  
4516289, at \*3 (6th Cir. 2020) (order)”

25 Although Plaintiff intends to, and will, adduce proof of the  
26 *Sleekcraft* factors, the presumption exists, and it is entitled to

stand on this presumption alone. *See also, Brookfield Commc'ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999) (“In light of the virtual identity of marks, if they were used with identical products or services likelihood of confusion would follow as a matter of course”); *Park 'n Fly, Inc. v. Dollar Park & Fly, Inc.*, 782 F.2d 1508, 1509 (9th Cir. 1986) (holding that when marks and services are identical and channels are the same, likelihood of confusion is assumed, even if the other factors weight against); *see also Blue Mako Inc. v. Minidis*, No. CV 07-916 AHM (SHX), 2008 WL 11334205 (C.D. Cal. June 23, 2008) (applying these principles to similar facts). Although Plaintiff intends to, and will, adduce proof of the *Sleekcraft* factors, the presumption exists, and it is entitled to stand on this presumption alone.

4. Defendants’ Position Statement: If Defendants are not found to have a superior claim to ownership, authorization issues framed by the Proposed Final Pretrial Conference Order (Dkt. No. 244), the Memoranda of Contentions of Law and Fact (Dkt. Nos. 197 and 199) and pleadings are whether, based on a partnership meeting of the minds, governing documents, course of performance, fiduciary and contractual obligations, the implied covenant of good faith and fair dealing, and reasonable and detrimental reliance: (1) PCJV USA, LLC had a “lifetime” license as a joint venture partner; (2) PCJV USA, LLC had a 20-year license with three 10-year options; (3) PCJV USA, LLC had a non-terminable-at-will license; (4) Plaintiff owed

1 fiduciary or contractual obligations to provide PCJV USA,  
2 LLC a long-term license consistent with the PCJV USA  
3 Parties being joint venture partners, *see* J. Thomas  
4 McCarthy, *McCarthy on Trademarks and Unfair*  
5 *Competition*, § 18:15, at (5th ed.) (“It is elementary  
6 ancient law that an assignee never stands in any better  
7 position than his assignor”) (citation omitted); and (5)  
8 other defenses to enforcement, including promissory  
9 estoppel, authorizing PCJV USA, LLC’s continued use of  
10 the U.S. trademarks. Plaintiff’s proffered statement is non-  
11 responsive. It is a combative, inappropriate and false  
12 narrative of record evidence, preliminary rulings and the  
13 authorization issues for trial as set forth in the Proposed  
14 Final Pretrial Conference Order (Dkt. No. 244),  
15 Memoranda of Contentions of Law and Fact (Dkt. Nos.  
16 197 and 199) and pleadings. “The court’s preliminary  
17 injunction did not make final factual determinations; no  
18 party moved for summary judgment; and the jury needs to  
19 be instructed on the claims asserted in this case.” Dkt. No.  
20 254 at 2. Plaintiff’s asserted “legal positions,” which seek  
21 to avoid a trial on the merits, are also based on inapplicable  
22 authority (or no authority at all) and misstate the record.  
23 For these reasons, including because Plaintiff’s “legal  
24 positions” go beyond identifying the actual authorization  
25 issues set for trial, Defendants will address them if or when  
26 they arise after the evidence on PCJV USA LLC’s  
27

1 authorization to continue using the U.S. trademarks is  
2 presented at trial.

3 5. Plaintiff's Supporting Evidence: Trial Exhibit 29 (May 31,  
4 2024 Termination); photographs of various stores taken  
5 from May 31, 2025 through the present; Testimony of  
6 Koren; Plaintiff executives Gregorio (Plaintiff's CEO),  
7 Concepcion (Plaintiff's COO charged with US operations),  
8 Tan (Director responsible for international franchising);  
9 investigator; Franchisees; Kim Lambert and Barry Kurtz;  
10 in addition to the following documents Amended Joint  
11 Venture Agreement and Joint Venture Agreement.

12 6. Defendants' Supporting Evidence: documents and  
13 testimony including and related to (1) Defendants' senior  
14 use and quality control of Potato Corner in the United  
15 States; (2) the superseding and restructure agreement  
16 confirmed by Guy Koren and Jose Magsaysay vesting  
17 partnership rights to build, develop and control Potato  
18 Corner in the United States; (3) the joint venture agreement  
19 vesting lifetime partnership rights to build, develop and  
20 control Potato Corner in the United States; (4) absent a  
21 license agreement, which SPAVI Parties disavow, PCJV  
22 USA, LLC's owns the U.S. Potato Corner marks as its use  
23 inured to its own benefit; (5) all the terms and conditions  
24 of the JVA and First Amendment thereto controlling  
25 licensing, approval of franchisee agreements, including as  
26 disclosed in franchise disclosure documents ("FDDs"), and  
27 management and operations of Potato Corner in the United  
28

1 States; (6) parol evidence regarding the partners' meeting  
2 of the minds; (7) the JVA's related agreements, which  
3 remained operative and under which Cinco Corporation  
4 remained a fiduciary and party to the JVA after the First  
5 Amendment as confirmed a plethora of documentary  
6 evidence; (8) the license agreements setting forth the terms  
7 and conditions upon which PCJV USA, LLC's senior use  
8 and control of Potato Corner in the United States would  
9 inure to the benefit of Cinco Corporation, which the SPAVI  
10 Parties now disavow, even though Cinco Corporation  
11 offered it through DLA Piper, or thereafter accepted,  
12 countersigned or otherwise entered into the license  
13 agreements as evidenced in many writings and agreed and  
14 approved of in FDDs; (9) course of performance for more  
15 than a decade as evidenced by approved FDDs, which  
16 ratified the license agreements and confirmed an entered  
17 into license agreement; (10) reasonable and detrimental  
18 reliance; (11) fiduciary obligations, the implied covenant  
19 of good faith and fair dealing, and the JVA and First  
20 Amendment's plain acknowledgement that there are no  
21 terminable-at-will branding rights; (12) Plaintiff's denial of  
22 stepping into Cinco Corporation's shoes and acquiring the  
23 licensing burdens attached to the U.S. trademarks; and (13)  
24 Plaintiff's suppression of authorization evidence

25 e. Element No. 5: Damage caused by infringement designation.

26 1. This element is disputed.

27 2. Nature of Dispute: ~~actual~~Legal and Factual

3. Plaintiff's Position Statement: The standard to be followed is set forth in 15 USC § 1117 which only requires this Court's approval in equity to proceed with money damages. The Courts have, contrary to Defendant's apparent position, removed the requirement of willfulness to obtain disgorgement., *Romag Fasteners, Inc. v. Fossil, Inc.*, — U.S. —, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d 672 (2020) (holding willfulness is not a precondition to disgorgement of profits under the Lanham Act). (Dkt. No. 594.) Defendants ignore the difference between normal infringement and this case, the holdover licensee, where the standard for likelihood of confusion is lowered, and even sometimes presumed, and irreparable harm is also presumed. The Lanham Act allows Defendants to raise the other arguments to rebut the presumption of irreparable harm, but the standard as applied here allows for disgorgement

4. Defendants' Position Statement: Likelihood of confusion, when coupled with likely irreparable harm, is the standard for injunctive relief, the primary remedy under the Lanham Act (*National Grange of the Order of Patrons of Husbandry v. Cal. State Grange*, 182 F.Supp. 3d 1065, 1071 (E.D. Cal. 2016)), the benefits of which Plaintiff has already obtained in this case by flipping franchisees under contract with Defendants to join its organization— notwithstanding PCJV USA, LLC's rebranding rights and obligations disclosed in FDDs; Plaintiff fails to

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1 acknowledge its legal and higher burden of proof to  
2 establish an entitlement to monetary recovery, whether  
3 legal damages (which Plaintiff is not pursuing as there is  
4 no evidence it has a legal right to conduct a franchise  
5 business in California or elsewhere in the United States) or  
6 disgorgement—both of which stem from actual confusion  
7 in the market not attributable to Plaintiff’s own conduct as  
8 proof of a defendant actually trading on the goodwill of  
9 another resulting in either lost profits or unjust enrichment  
10 (Gracie v. Gracie, 217 F.3d 1060, 1068 (9th Cir. 2000)); in  
11 addition to there being no consumer survey evidence or  
12 probative evidence of actual confusion not attributable to  
13 Plaintiff’s own conduct (let alone attributable to trademark  
14 infringement), Defendants’ exercise of bona fide good faith  
15 belief not to waive (a) pre-existing partnership (whether  
16 ownership or authorization) rights and obligations to use  
17 and control the U.S. trademarks and to equally receive  
18 service fees if any royalties were paid to the registrant  
19 when (b) Plaintiff allegedly acquired U.S. Potato Corner  
20 trademarks in the middle of franchise litigation between  
21 joint venture partners, (c) over Defendants’ objection, (d)  
22 initiating this lawsuit in a conspiracy 3 days after the  
23 settlement with Plaintiff’s assignor to circumvent a state  
24 court injunction rather than go to trial in state court, (e)  
25 disregarding a tolling agreement to continue discussions  
26 and not filing an action for declaratory relief if there was  
27 an impasse to determine who has superior trademark rights,

(f) creating the risk of marketplace confusion by virtue of its own conduct; and (e) suppressing evidence, including properly served discovery ordered to be produced, does not satisfy Plaintiff's legal burden of proof. *See Yuga Labs, Inc. v. Ripps*, Case No. CV 22-4355-JFW(JEMx), 2023 WL 7089922, at \*10 (C.D. Cal. Oct. 25, 2023) (while totality of the circumstances are used to determine an award of profits, "defendant's mental state is 'a highly important consideration . . . .'").

3-5. Plaintiff's Supporting Evidence: Defendants have produced financials for the period in question May 31, 2024 through the present, and, given that the entirety of their business is built of the confusion, we only need to prove profits which can be disgorged. Thus, the financials as well as Koren testimony and testimony of franchisees as well as correspondence regarding costs of goods sold as well as the testimony of the CFO of Shakey's will establish damage. No expert is needed for arithmetic. To the contrary, it is Defendant who bears a heavier burden of establishing what costs or expenses "actually contributed to the sale of the infringing products." *Monster Energy Co. v. Integrated Supply Network, LLC*, 533 F. Supp. 3d 928, 938 (C.D. Cal. 2021)

~~4. Defendants' Supporting Evidence:~~

6. Defendant's Supporting Evidence: documents and testimony including and related to (1) the parties' meeting of the minds and partnership agreement to co-own Potato



1 Corner in the United States, where Defendants promised to  
2 contribute services and Plaintiff promised to vest IP rights  
3 in the partnership as supported by written agreements and  
4 verified pleadings; (2) the JVA and related agreements  
5 vesting licensing and quality control in PCJV USA, LLC's  
6 President, approval of franchise agreements, including as  
7 disclosed in FDDs, in PCJV USA, LLC's Management,  
8 and authority to manage Potato Corner in the United States  
9 in PCJV USA, LLC's executive officers (not Cinco  
10 Corporation); (3) absent a license agreement, PCJV USA,  
11 LLC's use of the U.S. Potato Corner marks inured to PCJV  
12 USA, LLC's benefit; (4) Defendants' continuing  
13 authorization to use the U.S. Potato Corner trademarks  
14 under a lifetime, 50-year, or non-terminable-at-will  
15 license, including for the reasons stated herein; (5)  
16 Defendants' objection to Plaintiff's announced plans to  
17 acquire Cinco Corporation's assets and liabilities, but  
18 representations to Defendants that they would be bound by  
19 a settlement with Cinco resolving licensing issues; (6) the  
20 parties' tolling agreement, including to continue  
21 discussions after Defendants separately settled with Cinco  
22 Corporation; (7) Plaintiff and Cinco Corporation's bad  
23 faith conspiracy to initiate this lawsuit 3 days after the  
24 settlement with Plaintiff's assignor to circumvent a state  
25 court injunction rather than go to trial in state court or settle  
26 with Defendants; (8) Plaintiff's own misconduct creating  
27 the risk of marketplace confusion; (9) no consumer survey

evidence or evidence of marketplace confusion attributable to trademark infringement or unfair competition that is the subject of this case; (10) Plaintiff's suppression of evidence, including properly served discovery ordered to be produced; (11) no evidence of unjust enrichment, including no net profits or net profits attributable to the alleged infringement at issue, to disgorge; and (12) no evidence regarding individual Defendants' responsibility

**2) Claim 3: False Designation of Origin and Description of Fact Against All Entity Defendants (15 U.S.C. § 1125):**

- a. Element No. 1: The Defendants used a designation, such as a word, term, name, device, or a combination thereof, or a false designation of origin:
1. This element is disputed.
  2. Nature of Dispute: Legal and Factual
  3. Plaintiff's Position Statement: This is essentially the federal version of our § 17200 claim in that, when looked at in its entirety, fits squarely within what was intended by 15 USDCD 1125(a)(1)(A). By continuing to operate using the same federal trademarks, menu layouts, and color schemes, and promotes its new brand as having the 'same taste' after having reverse engineered the flavorings and then used that, plus the menu that is unchanged – same colors, fonts, pictures, layout, even same product names – and all of this is likely to cause consumer confusion regarding the source or origin of the goods or services, as customers may believe the new business is still affiliated

1 with or originates from the original brand. *See generally*  
2 *Blue Mako Inc. v. Minidis*, No. CV 07-916 AHM (SHX),  
3 2008 WL 11334205 (C.D. Cal. June 23, 2008) (applying  
4 these principles to similar facts).

5 4. Defendants' Position Statement: The legal issues set for  
6 trial in the Proposed Final Pretrial Conference Order (Dkt.  
7 No. 244), Memoranda of Contentions of Law and Fact  
8 (Dkt. Nos. 197 and 199) and pleadings regard ownership  
9 of and authorization to use the U.S. Potato Corner  
10 trademarks; there is no "trade dress" issue in the pleadings  
11 set for trial. Moreover, "same as" comparative advertising  
12 of taste or fragrance is not unfair competition. *Smith v.*  
13 *Chanel, Inc.*, 402 F.2d 562, 563 (9th Cir. 1968). Further,  
14 proffered "former location" confusion is not actionable in  
15 California (*see* Bus. & Prof. Code § 16600) nor proves or  
16 is probative of ordinary consumer confusion that is the  
17 subject of the Lanham Act after the market settles from a  
18 partnership divorce, especially after Plaintiff is the one  
19 who changed the *status quo* and caused any confusion

20 5. Plaintiff's Supporting Evidence: Photographs and  
21 testimony from former franchisees, the COO of SPAVI,  
22 Mr. Concepcion, as well as the testimony of Koren, and the  
23 Franchise Agreements, FDDs, and leases, of PCJV over the  
24 years.

25 6. Defendants' Supporting Evidence: documents and  
26 testimony including and related to (1) Defendants'  
27 ownership of the U.S. Potato Corner trademarks, which  
28

merely are a symbol of PCJV USA, LLC's business and restaurant and catering services; (2) Defendants' authorization to use the U.S. Potato Corner trademarks; (3) no consumer survey evidence; (4) no evidence of actionable ordinary consumer confusion but just speculation about market conditions after the market stabilizes, let alone actionable confusion attributable to alleged unfair competition framed by the Proposed Final Pretrial Conference Order (Dkt. No. 244), Memoranda of Contentions of Law and Fact (Dkt. Nos. 197 and 199) and pleadings; (5) no marketplace confusion before Plaintiff brought this action; (6) any marketplace confusion would stem from Plaintiff's efforts to create it rather than Plaintiff just filing an action for declaratory relief to resolve ownership and authorization issues after it acquired contested assets in the middle of franchise litigation between joint venture partners; and (7) Plaintiff's suppression of evidence, including Plaintiff's communications with U.S. franchisees under contract with PCJV USA, LLC that were timely requested and ordered be produced.

- b. Element No. 2: The use was in interstate commerce.
  - i. This element is not disputed
- c. Element No. 3: The use was in connection with goods or services.
  - 1. This element is disputed.
  - 2. Nature of Dispute: Legal and Factual

3. Plaintiff's Position Statement: Defendants' purported objection is one of fact no law. The registrations are for services, and the use of the marks was for services. If Defendants were using the Marks for some other purpose, they have more liability than previously known.

4. Defendants' Position Statement: The registered first use of the registered marks are for restaurant and catering services; the registered marks are merely a symbol of Potato Corner in the United States, which distributed goods and services; the case is not a "goods" case, including because the registrations predate any alleged unfair competition.

5. Plaintiff's Supporting Evidence: USPTO filings including Registrations and Assignments.

6. Defendants' Supporting Evidence: documents and testimony including and related to (1) U.S. Reg. No. 5900257: the word mark "Potato Corner"; (2) U.S. Reg. No. 6088456: "World's Best Flavored French Fries; and (3) U.S. Reg. No. 3760041: the Logo Mark.

d. Element No. 4: Defendants' designation or false designation is likely to cause confusion, mistake, or deception regarding either the affiliation, connection, or association of the defendant with another person, or the origin, sponsorship, or approval of the defendant's goods, services, or commercial activities by another person.

1. This element is disputed in part.

2. Nature of Dispute: Legal and Factual

1 3. Plaintiff's Legal Position: The ultimate test" for unfair  
2 competition is exactly the same as for trademark  
3 infringement: "whether the public is likely to be deceived  
4 or confused." *Century 21 Real Est. Corp. v. Sandlin*, 846  
5 F.2d 1175, 1178 (9th Cir. 1988) Regarding likelihood of  
6 confusion, which may be presumed, and the4 jury may be  
7 so instructed "[w]here,' as here, "a licensee persists in the  
8 unauthorized use of a licensor's trademark, courts have  
9 found that the continued use alone establishes a likelihood  
10 of consumer confusion." *Robert Trent Jones II, Inc. v.*  
11 *GFSL, Inc.*, 537 F. Supp. 2d 1061, 1065 (N.D. Cal. 2008)  
12 (citing and quoting *Sun Microsystems v. Microsoft Corp.*,  
13 999 F.Supp. 1301, 1311 (N.D.Cal.1998) (citing *Paisa, Inc.*  
14 *v. N & G Auto, Inc.*, 928 F.Supp. 1009, 1012 n. 4  
15 (C.D.Cal.1996); *Hollywood Athletic Club*, 938 F.Supp. at  
16 614–15 (C.D.Cal.1996)). The Sixth Circuit's analysis in  
17 Max Rack, Inc. v. Core Health & Fitness, LLC, 40 F.4th  
18 454, 464 (6th Cir. 2022) is instructive:

19 "A separate body of law has developed for this  
20 distinct claim that a holdover licensee has  
21 continued to use a licensor's mark after their  
22 agreement expired. *See* 4 McCarthy, *supra*, §  
23 25:31 (citing cases). In this context, courts have  
24 jettisoned the usual totality-of-the-  
25 circumstances test in favor of a more categorical  
26 rule: "proof of continued, unauthorized use of an  
27 original trademark by one whose license to use  
the trademark had been terminated is sufficient  
to establish 'likelihood of confusion.' " *U.S.*  
*Structures, Inc. v. J.P. Structures, Inc.*, 130 F.3d  
1185, 1190 (6th Cir. 1997); *ITT Indus., Inc. v.*

1 *Wastecorp. Inc.*, 87 F. App'x 287, 293 (3d Cir.  
2 2004); *Gorenstein Enters., Inc. v. Quality Care-*  
3 *USA, Inc.*, 874 F.2d 431, 435 (7th Cir. 1989);  
4 *Burger King Corp. v. Mason*, 710 F.2d 1480,  
5 1492–93 (11th Cir. 1983); *Pro. Golfers Ass'n of*  
6 *Am. v. Bankers Life & Cas. Co.*, 514 F.2d 665,  
7 670 (5th Cir. 1975); *L & L Wings, Inc. v. Marco-*  
8 *Destin, Inc.*, 676 F. Supp. 2d 179, 188 (S.D.N.Y.  
9 2009). This rule makes good sense when a  
10 holdover licensee blatantly infringes the  
11 licensor's mark by using that mark in the same  
12 way as it did before the agreement expired.  
13 Without any need to tick through factors, it  
14 should be obvious that consumers will believe,  
15 for example, that a pizza restaurant remains  
16 affiliated with the “Little Caesars” chain when a  
17 terminated franchisee continues to operate the  
18 pizzeria as a Little Caesars. *See Little Caesar*  
19 *Enters., Inc. v. Miramar Quick Serv. Rest. Corp.*,  
20 2020 WL 4516289, at \*3 (6th Cir. 2020) (order)”

15 Although Plaintiff intends to, and will, adduce proof of the  
16 *Sleekcraft* factors, the presumption exists, and it is entitled to  
17 stand on this presumption alone. *See also, Brookfield Commc'ns,*  
18 *Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999)  
19 (“In light of the virtual identity of marks, if they were used with  
20 identical products or services likelihood of confusion would  
21 follow as a matter of course”); *Park 'n Fly, Inc. v. Dollar Park &*  
22 *Fly, Inc.*, 782 F.2d 1508, 1509 (9th Cir. 1986) (holding that when  
23 marks and services are identical and channels are the same,  
24 likelihood of confusion is assumed, even if the other factors  
25 weight against); *see also Blue Mako Inc. v. Minidis*, No. CV 07-  
26 916 AHM (SHX), 2008 WL 11334205 (C.D. Cal. June 23, 2008)

(applying these principles to similar facts).

4. Defendants' Position Statement: Defendants are not going to argue no likelihood of confusion arising from continuous use of registered and unregistered trademarks if Defendants do not prevail on ownership or authorization. However, this is not a "trade dress" case. The legal issues set for trial in the Proposed Final Pretrial Conference Order (Dkt. No. 244), Memoranda of Contentions of Law and Fact (Dkt. Nos. 197 and 199) and pleadings regard ownership of and authorization to use the U.S. Potato Corner trademarks; there is no "trade dress" issue in the pleadings set for trial. Moreover, "same as" comparative advertising of taste or fragrance is not unfair competition. *Smith v. Chanel, Inc.*, 402 F.2d 562, 563 (9th Cir. 1968). Further, proffered "former location" confusion is not actionable in California (*see* Bus. & Prof. Code § 16600) nor proves or is probative of ordinary consumer confusion that is the subject of the Lanham Act after the market settles from a partnership divorce, especially after Plaintiff is the one who changed the *status quo* and caused any confusion.

5. Plaintiff's Supporting Evidence: Trial Exhibit 29 (May 31, 2024 Termination); photographs of various stores taken from May 31, 2025 through the present; Testimony of Koren; Plaintiff executives Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with US operations), Tan (Director responsible for international franchising);



investigator; Franchisees; Kim Lambert and Barry Kurtz;  
in addition to the following documents Amended Joint  
Venture Agreement and Joint Venture Agreement; the  
COO of SPAVI, Mr. Concepcion, the Franchise  
Agreements, FDDs, and leases, of PCJV over the years.

6. Defendants' Supporting Evidence: documents and  
testimony including and related to (1) Defendants'  
ownership of the U.S. Potato Corner trademarks, which  
merely are a symbol of PCJV USA, LLC's business and  
restaurant and catering services; (2) Defendants'  
authorization to use the U.S. Potato Corner trademarks; (3)  
no consumer survey evidence; (4) no evidence of  
actionable ordinary consumer confusion but just  
speculation about market conditions after the market  
stabilizes, let alone actionable confusion attributable to  
alleged unfair competition framed by the Proposed Final  
Pretrial Conference Order (Dkt. No. 244), Memoranda of  
Contentions of Law and Fact (Dkt. Nos. 197 and 199) and  
pleadings; (5) no marketplace confusion before Plaintiff  
brought this action; (6) any marketplace confusion would  
stem from Plaintiff's efforts to create it rather than Plaintiff  
just filing an action for declaratory relief to resolve  
ownership and authorization issues after it acquired  
contested assets in the middle of franchise litigation  
between joint venture partners; and (7) Plaintiff's  
suppression of evidence, including Plaintiff's  
communications with U.S. franchisees under contract with

PCJV USA, LLC that were timely requested and ordered  
be produced

e. Element No. 5: Damage caused by false designation.

1. This element is disputed.

2. Nature of Dispute: Legal and factual

3. Plaintiff's Legal Position: The standard to be followed is set forth in 15 USC § 1117 which only requires this Court's approval in equity to proceed with money damages. The Courts have, contrary to Defendant's apparent position, removed the requirement of willfulness to obtain disgorgement., *Romag Fasteners, Inc. v. Fossil, Inc.*, — U.S. —, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d 672 (2020) (holding willfulness is not a precondition to disgorgement of profits under the Lanham Act). (Dkt. No. 594.) Defendants ignore the difference between normal infringement and this case, the holdover licensee, where the standard for likelihood of confusion is lowered, and even sometimes presumed, and irreparable harm is also presumed. The Lanham Act allows Defendants to raise the other arguments to rebut the presumption of irreparable harm, but the standard as applied here allows for disgorgement.

4. Defendants' Position Statement: Likelihood of confusion, when coupled with likely irreparable harm, is the standard for injunctive relief, the primary remedy under the Lanham Act (*National Grange of the Order of Patrons of Husbandry v. Cal. State Grange*, 182 F.Supp. 3d 1065,

1 1071 (E.D. Cal. 2016)), the benefits of which Plaintiff has  
2 already obtained in this case by flipping franchisees under  
3 contract with Defendants to join its organization—  
4 notwithstanding PCJV USA, LLC’s rebranding rights and  
5 obligations disclosed in FDDs; Plaintiff fails to  
6 acknowledge its legal and higher burden of proof to  
7 establish an entitlement to monetary recovery, whether  
8 legal damages (which Plaintiff is not pursuing as there is  
9 no evidence it has a legal right to conduct a franchise  
10 business in California or elsewhere in the United States) or  
11 disgorgement—both of which stem from actual confusion  
12 in the market not attributable to Plaintiff’s own conduct as  
13 proof of a defendant actually trading on the goodwill of  
14 another resulting in either lost profits or unjust enrichment  
15 (*Gracie v. Gracie*, 217 F.3d 1060, 1068 (9th Cir. 2000)); in  
16 addition to there being no consumer survey evidence or  
17 probative evidence of actual confusion not attributable to  
18 Plaintiff’s own conduct (let alone attributable to trademark  
19 infringement), Defendants’ exercise of bona fide good faith  
20 belief not to waive (a) pre-existing partnership (whether  
21 ownership or authorization) rights and obligations to use  
22 and control the U.S. trademarks and to equally receive  
23 service fees if any royalties were paid to the registrant  
24 when (b) Plaintiff allegedly acquired U.S. Potato Corner  
25 trademarks in the middle of franchise litigation between  
26 joint venture partners, (c) over Defendants’ objection, (d)  
27 initiating this lawsuit in a conspiracy 3 days after the

1 settlement with Plaintiff's assignor to circumvent a state  
2 court injunction rather than go to trial in state court, (e)  
3 disregarding a tolling agreement to continue discussions  
4 and not filing an action for declaratory relief if there was  
5 an impasse to determine who has superior trademark rights,  
6 (f) creating the risk of marketplace confusion by virtue of  
7 its own conduct; and (e) suppressing evidence, including  
8 properly served discovery ordered to be produced, does not  
9 satisfy Plaintiff's legal burden of proof. *See Yuga Labs,*  
10 *Inc. v. Rippis*, Case No. CV 22-4355-JFW(JEMx), 2023  
11 WL 7089922, at \*10 (C.D. Cal. Oct. 25, 2023) (while  
12 totality of the circumstances are used to determine an  
13 award of profits, "defendant's mental state is 'a highly  
14 important consideration . . . .'").

- 15 5. Plaintiff's Supporting Evidence: Defendants have  
16 produced financials for the period in question May 31,  
17 2024 through the present, and, given that the entirety off  
18 their business is built off the confusion, we only need to  
19 prove profits which can be disgorged. Thus, the financials  
20 as well as Koren testimony and testimony of franchisees as  
21 well; as correspondence regarding costs of goods sold as  
22 well as the testimony of the CFO of Shakley's will  
23 establish damage. No expert is needed for arithmetic. To  
24 the contrary, it is Defendant who bears a heavier burden of  
25 establishing what costs or expenses "actually contributed  
26 to the sale of the infringing products." *Monster Energy Co.*

1 *v. Integrated Supply Network, LLC*, 533 F. Supp. 3d 928,  
2 938 (C.D. Cal. 2021)

- 3 6. Defendant's Supporting Evidence: documents and  
4 testimony including and related to (1) the parties' meeting  
5 of the minds and partnership agreement to co-own Potato  
6 Corner in the United States, where Defendants promised to  
7 contribute services and Plaintiff promised to vest IP rights  
8 in the partnership as supported by written agreements and  
9 verified pleadings; (2) the JVA and related agreements  
10 vesting licensing and quality control in PCJV USA, LLC's  
11 President, approval of franchise agreements, including as  
12 disclosed in FDDs, in PCJV USA, LLC's Management,  
13 and authority to manage Potato Corner in the United States  
14 in PCJV USA, LLC's executive officers (not Cinco  
15 Corporation); (3) absent a license agreement, PCJV USA,  
16 LLC's use of the U.S. Potato Corner marks inured to PCJV  
17 USA, LLC's benefit; (4) Defendants' continuing  
18 authorization to use the U.S. Potato Corner trademarks  
19 under a lifetime, 50-year, or non-terminable-at-will  
20 license, including for the reasons stated herein; (5)  
21 Defendants' objection to Plaintiff's announced plans to  
22 acquire Cinco Corporation's assets and liabilities, but  
23 representations to Defendants that they would be bound by  
24 a settlement with Cinco resolving licensing issues; (6) the  
25 parties' tolling agreement, including to continue  
26 discussions after Defendants separately settled with Cinco  
27 Corporation; (7) Plaintiff and Cinco Corporation's bad

1 faith conspiracy to initiate this lawsuit 3 days after the  
2 settlement with Plaintiff's assignor to circumvent a state  
3 court injunction rather than go to trial in state court or settle  
4 with Defendants; (8) Plaintiff's own misconduct creating  
5 the risk of marketplace confusion; (9) no consumer survey  
6 evidence or evidence of marketplace confusion attributable  
7 to trademark infringement or unfair competition that is the  
8 subject of this case; (10) Plaintiff's suppression of  
9 evidence, including properly served discovery ordered to  
10 be produced; (11) no evidence of unjust enrichment,  
11 including no net profits or net profits attributable to the  
12 alleged infringement at issue, to disgorge; and (12) no  
13 evidence regarding individual Defendants' responsibility

14 **3) Claim 4: Contributory Trademark Infringement Against All**  
15 **Defendants (Against Guy Koren, PCJV USA, LL, PCI Trading,**  
16 **LLC, Potato Corner LA Group, LLC; GK Capital, LLC or NKM**  
17 **Capital Group, LLC)**

18 a. Element No. 1: inducement of any Defendant to infringe one of  
19 the Marks (affirmative steps or actions taken to encourage  
20 infringement, exercising control over means of infringement,  
21 offering tools to assist in infringement, instructing how to  
22 infringe).

23 1. This element is disputed.

24 2. Nature of Dispute: Legal and Factual

25 3. Plaintiff's Position Statement: it is assumed that the  
26 primary dispute by Defendants here will be as to the  
27 underlying question of infringement (ownership, license,  
28

etc.). But if it is true that Plaintiff owned the Marks, and had exclusive right to control them and Defendants lost their right on May 31, 2024, the question is fairly on the table whether (1) PCJV, the former licensees of the brand, engaged in post termination contribution or inducement to its sublicensees whose rights had also been terminated by giving them aid and comfort (and collecting money from them) after termination, or (2) the supply chain affiliate PCI Trading's sales of infringing cups etc. was constituted contribution or inducement, or (3) whether Koren, the owner or operator of them all was also responsible for contribution or inducement. 115 USC 1114; *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 264–65 (9th Cir. 1996) (applied to host of swap meets when host knew infringement was occurring); *citing Inwood Lab'ys, Inc. v. Ives Lab'ys, Inc.*, 456 U.S. 844, 854 (1982); *see Inwood Lab'ys, Inc.*, 456 U.S. at 844, 854 (1982) (explaining that when a party “suppl[ies]] its product to one whom it knows or has reason to know is engaging in trademark infringement, the manufacturer or distributor is contributorily responsible for any harm done as a result of the deceit”).

4. Defendants' Position Statement: To establish liability for contributory infringement, Plaintiff bears the burden of proving the defendant had intent to cause direct infringement or prior knowledge of direct infringement. *See Perfect 10, Inc. v. Visa Intern. Service Ass'n*, 494 F.3d

788, 807 (9th Cir. 2007). That is not the same thing as having knowledge of a bona fide dispute over trademark ownership or authorization to use a trademark. Similarly, officer or director liability includes a knowledge requirement to establish liability. *SinCo Technologies Pte Ltd. v. SinCo Electronics*, Case No. 17-cv-05517-EMC, 2018 WL 10638468, at \*1 (N.D. Cal. Jan. 5, 2018).

5. Plaintiff's Supporting Evidence: Testimony and statements of Koren, franchisees, and SPAVI executives after termination; correspondence with franchisees by SPAVI; Franchise agreements and FDDs.
6. Defendants' Supporting Evidence: documents and testimony including and related to (1) the evidentiary record establishing a bona fide trademark dispute over ownership and authorization to use the U.S. Potato Corner trademarks; (2) the alleged contributory infringing Defendants did not have the intent to cause infringement or knowledge that direct infringement was occurring; (3) the alleged contributory infringing Defendants are not similarly situated, including because some our downstream users (who contributing nothing upstream) and one is simply a supplier of publicly available materials; (4) Mr. Koren, as an officer or member of Defendant entities, also had no intent to confuse consumers, had no intent to trade off the goodwill he did not own or have authorization to use, and had good faith reasons to believe that trademark infringement was not occurring.



b. Element No. 2: Material contribution

1. This element is disputed.
2. Nature of Dispute: Factual
3. Plaintiff's Supporting Evidence: testimony of Koren, his staff, franchisees, and their communications
4. Defendants' Supporting Evidence: documents and testimony including and related to whether the contribution of each Defendant was material to the alleged infringement and was provided with the requisite knowledge.

c. Element No. 3: Injury to Plaintiff.

1. This element is disputed
2. Nature of Dispute: Legal and Factual
3. Plaintiff's Position Statement: The standard to be followed is set forth in 15 USC 1117 which only requires this Court's approval in equity to proceed with money damages. The Courts have contrary to Defendant's apparent position removed the requirement of willfulness to obtain disgorgement., *Romag Fasteners, Inc. v. Fossil, Inc.*, — U.S. —, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d 672 (2020) (holding willfulness is not a precondition to disgorgement of profits under the Lanham Act). (Dkt. No. 594.) Defendants ignore the difference between normal infringement and this case, the holdover licensee, where the standard for likelihood of confusion is lowered, and even sometimes presumed, and irreparable harm is also presumed. The Lanham Act allows Defendants to raise the other arguments to rebut the presumption of irreparable

harm, but the standard as applied here allows for disgorgement.

4. PCJV USA Parties' Position Statement: Defendants incorporate their positions legal positions above regarding liability and damages for direct infringement and liability for contributory infringement. In addition, damages for contributory infringement should not be awarded upstream
5. Plaintiff's Supporting Evidence: Defendants have produced financials for the period in question May 31, 2024 through the present, and, given that the entirety of their business is built off the confusion, we only need to prove profits which can be disgorged. Thus, the financials as well as Koren testimony and testimony of franchisees as well; as correspondence regarding costs of goods sold as well as the testimony of the CFO of Shakley's will establish damage. No expert is needed for arithmetic. To the contrary, it is Defendant who bears a heavier burden of establishing what costs or expenses "actually contributed to the sale of the infringing products." *Monster Energy Co. v. Integrated Supply Network, LLC*, 533 F. Supp. 3d 928, 938 (C.D. Cal. 2021)
6. Defendants' Supporting Evidence: Defendants incorporate their above record.

4) **Claim 5: Contributory False Designation of Origin Against Guy Koren, PCJV USA, LL, PCI Trading, LLC, Potato Corner LA Group, LLC; GK Capital, LLC or NKM Capital Group, LLC**

- a. Element No. 1: inducement of any Defendant to make use a false designation, such as a word, term, name, device, or a combination thereof, or a false designation of origin (affirmative steps or actions taken to encourage infringement, exercising control over means oof infringement, offering tools to assist in infringement, instructing how to infringe).
- ii. This element is disputed.
- iii. Nature of Dispute: Legal and Factual
- iv. Plaintiff's Position Statement: it is assumed that the primary dispute by Defendants here will be as to the underlying question of infringement (ownership, license, etc.). But if it is true that Plaintiff owned the Marks, and had exclusive right to control them and Defendants lost their right on May 31, 2024, the question is fairly on the table whether (1) PCJV, the former licensees of the brand, engaged in post termination contribution or inducement to its sublicensees whose rights had also been terminated by giving them aid and comfort (and collecting money from them) after termination,, or (2) the supply chain affiliate PCI Trading's sales of infringing cups etc. was constituted contribution or inducement, or (3) whether Koren, the owner or operator oof them all was also responsible for contribution or inducement. 115 USC 1114; *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 264–65 (9th Cir. 1996) (applied to host of swap meets when host know infringement was occurring); *citing Inwood Lab'ys, Inc. v. Ives Lab'ys, Inc.*, 456 U.S. 844, 854 (1982); *see Inwood Lab'ys, Inc.*, 456 U.S. at 844, 854 (1982) (explaining

1 that when a party “suppl[ies]] its product to one whom it  
2 knows or has reason to know is engaging in trademark  
3 infringement, the manufacturer or distributor is contributorily  
4 responsible for any harm done as a result of the deceit”).

5 v. Defendants’ Position Statement: To establish liability for  
6 contributory infringement, Plaintiff bears the burden of  
7 proving the defendant had intent to cause direct infringement  
8 or prior knowledge of direct infringement. *See Perfect 10, Inc.*  
9 *v. Visa Intern. Service Ass’n*, 494 F.3d 788, 807 (9th Cir.  
10 2007). That is not the same thing as having knowledge of a  
11 *bona fide* dispute over trademark ownership or authorization to  
12 use a trademark. Similarly, officer or director liability includes  
13 a knowledge requirement to establish liability. *SinCo*  
14 *Technologies Pte Ltd. v. SinCo Electronics*, Case No. 17-cv-  
15 05517-EMC, 2018 WL 10638468, at \*1 (N.D. Cal. Jan. 5,  
16 2018).

17 vi. Plaintiff’s Supporting Evidence: Testimony and  
18 statements of Koren, franchisees, and SPAVI executives after  
19 termination; correspondence with franchisees by SPAVI;  
20 Franchise agreements and FDDs.

21 vii. Defendants’ Supporting Evidence: documents and  
22 testimony including and related to (1) the evidentiary record  
23 establishing a bona fide trademark dispute over ownership and  
24 authorization to use the U.S. Potato Corner trademarks; (2) the  
25 alleged contributory infringing Defendants did not have the  
26 intent to cause infringement or knowledge that direct  
27 infringement was occurring; (3) the alleged contributory

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1 infringing Defendants are not similarly situated, including  
2 because some of our downstream users (who contributing nothing  
3 upstream) and one is simply a supplier of publicly available  
4 materials; (4) Mr. Koren, as an officer or member of  
5 Defendant entities, also had no intent to confuse consumers,  
6 had no intent to trade off the goodwill he did not own or have  
7 authorization to use, and had good faith reasons to believe that  
8 trademark infringement was not occurring.

9 b. Element No. 2: Material contribution

- 10 i. This element is disputed.  
11 ii. Nature of Dispute: Factual  
12 iii. Plaintiff's Supporting Evidence: testimony of Koren, his  
13 staff, franchisees, and their communications  
14 iv. Defendants' Supporting Evidence: documents and  
15 testimony including and related to whether the contribution of  
16 each Defendant was material to the alleged infringement and  
17 was provided with the requisite knowledge.

18 c. Element No. 3: Injury to Plaintiff.

- 19 i. This element is disputed.  
20 ii. Nature of Dispute: Legal and factual  
21 ii. Plaintiff's Position Statement: The standard to be followed is  
22 set forth in 15 USC 1117 which only requires this Court's  
23 approval in equity to proceed with money damages. The  
24 Courts have contrary to Defendant's apparent position  
25 removed the requirement of willfulness to obtain  
26 disgorgement., *Romag Fasteners, Inc. v. Fossil, Inc.*, — U.S.  
27 —, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d 672

1 [\(2020\)](#) (holding willfulness is not a precondition to  
2 disgorgement of profits under the Lanham Act). (Dkt. No.  
3 594.) Defendants ignore the difference between normal  
4 infringement and this case, the holdover licensee, where the  
5 standard for likelihood of confusion is lowered, and even  
6 sometimes presumed, and irreparable harm is also presumed.  
7 The Lanham Act allows Defendants to raise the other  
8 arguments to rebut the presumption of irreparable harm, but  
9 the standard as applied here allows for disgorgement,  
10 iii. PCJV USA Parties' Position Statement: Defendants  
11 incorporate their legal positions above regarding liability and  
12 damages for direct infringement and liability for contributory  
13 infringement. In addition, damages for contributory  
14 infringement should not be awarded upstream.

15 iv. Plaintiff's Supporting Evidence: Defendants have  
16 produced financials for the period in question May 31, 2024  
17 through the present, and, given that the entirety of their  
18 business is built off the confusion, we only need to prove  
19 profits which can be disgorged. Thus, the financials as well as  
20 Koren testimony and testimony of franchisees as well; as  
21 correspondence regarding costs of goods sold as well as the  
22 testimony of the CFO of Shakley's will establish damage. No  
23 expert is needed for arithmetic. To the contrary, it is  
24 Defendant who bears a heavier burden of establishing what  
25 costs or expenses "actually contributed to the sale of the  
26 infringing products." *Monster Energy Co. v. Integrated*  
27 *Supply Network, LLC*, 533 F. Supp. 3d 928, 938 (C.D. Cal.

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2021)

iii. Defendants' Supporting Evidence: Defendants incorporate  
their above record.

**2) Claim 6: Common Law Trademark Infringement Against All  
Defendants (Against Guy Koren, PCJV USA, LL, PCI Trading, LLC,  
Potato Corner LA Group, LLC; GK Capital, LLC or NKM Capital  
Group, LLC).**

- a. Element No. 1: the Word Mark, Slogan Mark, and/or the Logo  
Mark (all collectively, the "Marks") are valid and protectible  
trademarks:
- i. This element is undisputed
- b. Element No. 2: Plaintiff owns the Word Mark, Slogan Mark, and/or  
the Logo Mark
- i. This element is disputed.
- ii. Nature of Dispute: Factual and Legal.
- iii. Plaintiff's Legal Position: Defendants do not dispute that  
the registrations for all three Marks (Trial Exhibit Nos. 1, 3,  
and 5) identify Cinco as the registrant and the first to use each  
of the three Marks, nor do Defendants dispute that the Deeds  
of Assignment attached to the notices filed with the USPTO  
(Trial Exhibit Nos. 4 and 6) confirm that, unequivocally and  
without exception, the entirety of these Marks were sold and  
assigned to Plaintiff, along with all the goodwill arising out of  
or associated with the Marks. Defendants also do not dispute  
the testimony of Seller (Cinco) and Buyer (SPAVI) that the  
Deeds are accurate in every way, that the sale and assignments  
were comprehensive, without carve outs, and fully

1 consummated. Instead, Defendants take internally inconsistent  
2 positions that are contradicted by various legal doctrine,  
3 including the ones discussed *supra*: Licensee Estoppel, the  
4 Lanham Act provisions rendering Defendants' positions  
5 contrary to federal law, Law of the Case, that the Authorities  
6 cited by Defendants do not support their position, including  
7 *Sengoku*, the Merger Doctrine, and Defendants' standing.

8 ii. Defendants' Position Statement: Defendants incorporate their  
9 legal positions above

10 iii. Plaintiff's Supporting Evidence: Notarized Deeds signed by  
11 seller and buyer; USPTO filings including Registrations and  
12 Assignments, testimony of Gregorio (Plaintiff's CEO),  
13 Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
14 Counsel), FDDs, Franchise Agreements.

15 iv. Defendants' Supporting Evidence: Defendants incorporate their  
16 above factual positions.

17 c. Element No. 3: Defendants used Word Mark, Slogan Mark, and/or the  
18 Logo Mark in interstate commerce after May 31, 2024:

19 i. This element is undisputed.

20 d. Element No. 4: Defendants' use of the Word Mark, Slogan Mark,  
21 and/or the Logo Mark in interstate commerce after May 31, 2024, was  
22 without the consent of Plaintiff and in a manner likely to cause  
23 confusion among ordinary consumers as to the source, sponsorship,  
24 affiliation, or approval of the services.

25 ii. This element is disputed.

26 iii. Nature of Dispute: Legal and Factual

27 iv. Plaintiff's Legal Position: As for absence of consent, given the  
28



1 absence of any ownership rights, Defendants must locate  
2 some rights as a licensee of the owner (SPAVI). Defendants  
3 offer two documents proffered as agreements that bind Cinco  
4 to a perpetual license. Neither work as a matter of law. First,  
5 they offer the unsigned October 10, 2010, document  
6 containing terms for a Master License Agreement (Trial  
7 Exhibit No. 11), which this Court (and the Ninth Circuit) have  
8 reviewed. Both have interpreted it as a matter of law,  
9 concluding that it is an unsigned draft (as Koren's testimony  
10 has confirmed) and illusory because the licensor is given no  
11 consideration for this purported agreement. The unsigned  
12 document cannot, as a matter of law, have bound Cinco, even  
13 through implied contract law, because Cinco did not do  
14 anything in furtherance of that document to imply its assent.  
15 Moreover, multiple times after October 10, 2010, documents  
16 were signed stating that Cinco would be expecting a 30%  
17 royalty recovery. Second, Plaintiffs point to § 3(g) of an  
18 Amended Joint Venture Agreement (and its predecessor the  
19 Joint Venture Agreement) – Trial Exhibit Nos. 8 and 9 – which  
20 this Court has already interpreted to constitute an agreement to  
21 agree, in the future, with Cinco on a license agreement. As the  
22 Ninth Circuit said in affirming this conclusion, “the AJVA  
23 contained an agreement to enter a *future* Master License  
24 Agreement, not a “perpetual license” like PCJV claims.”  
25 *Shakeys Pizza Asia Ventures, Inc. v. PCJV USA, LLC*, No. 24-  
26 7084, 2025 WL 1431270, at \*1 (9th Cir. May 19, 2025) (citing  
27 *First Nat'l Mortg. Co. v. Fed. Realty Inv. Tr.*, 631 F.3d 1058,

1065 (9th Cir. 2011) (“[A]n ‘agreement to agree,’ without more, is not a binding contract.”). This interpretation of the AJVA and JVA is a legal conclusion, which, as affirmed by the Ninth Circuit are legal conclusions, and, as such, these are pure conclusions of law, which means: **this Court’s conclusion that § 3(g) of the JVA and AJVA are agreements to agree and do not bind Cinco to a “perpetual license” are law of the case and cannot be disturbed or challenged at trial.** This theory based on interpretation of a contract has been considered and rejected by this Court and the Ninth Circuit in this case, and because it is a “pure issue[] of law, however, [it is] binding” on Defendants under law of the case. *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t of Agr.*, 499 F.3d 1108, 1114 (9th Cir. 2007); *see, e.g. Arizona v. California*, 460 U.S. 605, 618 (1983) ((citing the rule as being “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case”). Defendants now trot out other theories such the fact that the JVA and prior Operating Agreement are still somewhat live under a theory of partial integration, however, the following point prevails over each of these contortions: Defendants can point to no agreement or document, or acct, or statement, binding Cinco to a perpetual, irrevocable, royalty free licensee of its Marks. As such, in the absence of any written agreement, or documentation of any license terms, the sole license that existed as of May 31, 2024, was implied and

1 terminable at will *See Pogrebnoy v. Russian Newspaper*  
2 *Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal.  
3 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018) (“[A]n implied  
4 license, like any other contract, is terminable at the will of  
5 either party if it is not for a specified term.”). One final flaw  
6 exists in the attempt to bind Cinco to the AJVA, and that is  
7 one of issue preclusion in favor of Plaintiffs. As evidenced by  
8 Plaintiff’s own Third Amended Complaint (verified) in the  
9 Prior Governance Action, the entire pleading is based on the  
10 theory that -- and it sought judgment concluding that -- Cinco  
11 is an alter ego of the entity that was a 60% member of PCJV.  
12 (See Trial Exhibit No. 1421 p. 7:3-14.) Such allegations,  
13 having been dismissed, with prejudice, by Koren, render  
14 these accusations extinguished, and, as such, Defendants are  
15 precluded from alleging them ever again.

16 Regarding likelihood of confusion, which may be presumed,  
17 and the jury may be so instructed “[w]here,” as here, “a  
18 licensee persists in the unauthorized use of a licensor’s  
19 trademark, courts have found that the continued use alone  
20 establishes a likelihood of consumer confusion.” *Robert Trent*  
21 *Jones II, Inc. v. GFSI, Inc.*, 537 F. Supp. 2d 1061, 1065 (N.D.  
22 Cal. 2008) (citing and quoting *Sun Microsystems v. Microsoft*  
23 *Corp.*, 999 F.Supp. 1301, 1311 (N.D.Cal.1998) (citing *Paisa,*  
24 *Inc. v. N & G Auto, Inc.*, 928 F.Supp. 1009, 1012 n. 4  
25 (C.D.Cal.1996); *Hollywood Athletic Club*, 938 F.Supp. at 614–  
26 15 (C.D.Cal.1996)). The Sixth Circuit’s analysis in *Max Rack,*  
27 *Inc. v. Core Health & Fitness, LLC*, 40 F.4th 454, 464 (6th Cir.

2022) is instructive:

“A separate body of law has developed for this distinct claim that a holdover licensee has continued to use a licensor's mark after their agreement expired. *See* 4 McCarthy, *supra*, § 25:31 (citing cases). In this context, courts have jettisoned the usual totality-of-the-circumstances test in favor of a more categorical rule: “proof of continued, unauthorized use of an original trademark by one whose license to use the trademark had been terminated is sufficient to establish ‘likelihood of confusion.’ ” *U.S. Structures, Inc. v. J.P. Structures, Inc.*, 130 F.3d 1185, 1190 (6th Cir. 1997); *ITT Indus., Inc. v. Wastecorp. Inc.*, 87 F. App'x 287, 293 (3d Cir. 2004); *Gorenstein Enters., Inc. v. Quality Care-USA, Inc.*, 874 F.2d 431, 435 (7th Cir. 1989); *Burger King Corp. v. Mason*, 710 F.2d 1480, 1492–93 (11th Cir. 1983); *Pro. Golfers Ass'n of Am. v. Bankers Life & Cas. Co.*, 514 F.2d 665, 670 (5th Cir. 1975); *L & L Wings, Inc. v. Marco-Destin, Inc.*, 676 F. Supp. 2d 179, 188 (S.D.N.Y. 2009). This rule makes good sense when a holdover licensee blatantly infringes the licensor's mark by using that mark in the same way as it did before the agreement expired. Without any need to tick through factors, it should be obvious that consumers will believe, for example, that a pizza restaurant remains affiliated with the “Little Caesars” chain when a terminated franchisee continues to operate the pizzeria as a Little Caesars. *See Little Caesar Enters., Inc. v. Miramar Quick Serv. Rest. Corp.*, 2020 WL 4516289, at \*3 (6th Cir. 2020) (order)”

Although Plaintiff intends to, and will, adduce proof of the *Sleekcraft* factors, the presumption exists, and it is entitled to

stand on this presumption alone.

v. Defendants' Position Statement: Defendants incorporate all their above legal positions.

vi. Plaintiff's Supporting Evidence: Trial Exhibit 29 (May 31, 2024 Termination); photographs of various stores taken from May 31, 2025 through the present; Testimony of Koren; Plaintiff executives Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with US operations), Tan (Director responsible for international franchising); investigator; Franchisees; Kim Lambert and Barry Kurtz; in addition to the following documents Amended Joint Venture Agreement and Joint Venture Agreement.

vii. Defendants' Supporting Evidence: Defendants incorporate their above factual positions.

**3) Claim 9 (from FAC, Dkt. 65): Quantum Meruit Against PCJV**

a. Element No. 1: That Defendant requested, by words or conduct, that Plaintiff provide a license to use the Potato Corner Intellectual Property for the benefit of Defendant PCJV;

i. This element is disputed.

ii. Nature of Dispute: Legal and Factual

iii. Plaintiff's Position Statement: Defendants' issues are factual and not legal.

iv. Defendants' Position Statement: *Quantum meruit* is an implied contract (or quasi-contract) claim stemming from requested services "under which a plaintiff who has rendered services benefiting the defendant may recover the reasonable value of those services when necessary to prevent unjust enrichment of

the defendant.” *In re De Laurentiis Ent. Grp. Inc.*, 963 F.2d 1269, 1272 (9th Cir. 1992). Plaintiff will be unable to establish liability for *quantum meruit* for three reasons: Defendants (1) “requested” no (2) “services” from Plaintiff for which Plaintiff had a (3) “reasonable expectation” of payment. *See McLeod v. Zero Gravity Mgmt.*, 2:22-CV-01547-FWS-AGR, 2024 WL 3304527, at \*10 (C.D. Cal. Jan. 8, 2024); *see also Corsini v. Canyon Equity, LLC*, C-10-2061-JL, 2011 WL13247447, at \*6 (N.D. Cal, May 23, 2011). Plaintiff’s quantum meruit cause of action does not contain critical elements of the cause of action. *See* CACI No. 317.

- v. Plaintiff’s Supporting Evidence: Course of Dealings between Defendants and SPAVI,. Specifically, Defendants have no evidence of a written license to use SPAVI’s Potato Corner Intellectual Property, and, as such, its rights (that it has sold to its franchisees) derive from what is, at best, a terminable at will, fully revocable license because Defendants were nonetheless operating Potato Corner locations, as if a written license existed. *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff’d*, 742 F. App’x 291 (9th Cir. 2018) (“[A]n implied license, like any other contract, is terminable at the will of either party if it is not for a specified term.”). After SPAVI’s acquisition of the Potato Corner brand, it became the licensor of the Potato Corner Intellectual Property. Between December of 2021 through 2024, the months immediately preceding this action, SPAVI engaged in a good faith and exhaustive attempt to negotiate the terms of a written

1 license with PCJV. Defendant Guy Koren engaged and  
2 participated in this negotiation; Testimony of Koren, Plaintiff  
3 executives Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's  
4 COO charged with US operations), Tan (Director responsible  
5 for international franchising), Magsaysay (Cinco's CEO);  
6 Emails and correspondence with SPAVI, Koren, and PCJV  
7 relating to negotiations of a licensing agreement for the use of  
8 the Potato Corner Intellectual Property; Amended Joint Venture  
9 Agreement; Franchise Agreements; FDDs

- 10 vi. Defendants' Supporting Evidence: (1) There was no request for  
11 services; PCJV USA, LLC's objected to Plaintiff's transaction  
12 with its former fiduciary and joint venture partner Cinco  
13 Corporation and asserted its pre-existing rights to use and  
14 control Potato Corner in the United States; it did not "request"  
15 any services from Plaintiff; rather, PCJV USA, LLC's became  
16 subject to an involuntary interloper in breach of Cinco  
17 Corporation's fiduciary and contractual obligations; (2) No  
18 "services" were provided by Plaintiff to PCJV USA, LLC's  
19 within the meaning of *quantum meruit* even according to  
20 Plaintiff's own authority cited in its Memorandum of  
21 Contentions of Law and Fact (Dkt. No. 199, citing *Cosmonova,*  
22 *LLC v. BioFilm, Inc.*, 763 F. Supp. 3d 1157 (S.D. Cal. 2025)  
23 (dismissing quantum meruit claim)). Rather, Plaintiff allegedly  
24 provided an implied "at-will" license allegedly extinguishing  
25 PCJV USA, LLC's long-term right to use and/or to a long-term  
26 license, which was beneficial to Plaintiff, indeed far more  
27 beneficial to Plaintiff, and thus not a "service" within the

1 meaning of *quantum meruit*. *Cosmonova, LLC*, 763 F. Supp. 3d  
2 at 1172. (3) Plaintiff had no reasonable expectation of any  
3 royalty payment to Plaintiff for the same reason no royalty is  
4 recoverable under the Lanham Act. Plaintiff never paid a royalty  
5 to Cinco Corporation, no claim for breach of contract was  
6 brought by Cinco Corporation, and Plaintiff cannot put itself  
7 into a better situation than its assignor, Cinco Corporation. *See*  
8 *McCarthy, supra*, § 18:15 (“It is elementary ancient law that an  
9 assignee never stands in any better position than his  
10 assignor....”) (citation omitted). Defendants are simply seeking  
11 a windfall or to punish Defendants’ exercise of First  
12 Amendment rights.

- 13 a. Element No. 2: That Plaintiff provided such license to use the Potato  
14 Corner Intellectual Property as requested by Defendant PCJV.
- 15 i. This element is disputed.
  - 16 ii. Nature of Dispute: Legal and Factual
  - 17 iii. Plaintiff’s Position Statement: this is a factual dispute.
  - 18 iv. Defendants’ Position Statement: Defendant disputes Element 2  
19 for the same reason they dispute Element 1.
  - 20 v. Plaintiff’s Supporting Evidence: Defendants have operated  
21 Potato Corner locations that utilize the Potato Corner  
22 Intellectual Property through what is, at best, a terminable at  
23 will, fully revocable license because Defendants were  
24 nonetheless operating Potato Corner locations, as if a written  
25 license existed. *See Pogrebnoy v. Russian Newspaper*  
26 *Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017),  
27 *aff’d*, 742 F. App’x 291 (9th Cir. 2018) (“[A]n implied license,



1 like any other contract, is terminable at the will of either party if  
2 it is not for a specified term.”). SPAVI has consented to that use  
3 until the termination of the license agreement on May 31, 2024;  
4 Trial Exhibit 29 (May 31, 2024 Termination); Testimony of  
5 Concepcion (Plaintiff’s COO charged with US operations), Tan  
6 (Director responsible for international franchising), Magsaysay  
7 (Cinco’s CEO), Koren; Emails and correspondence with SPAVI,  
8 Koren, and PCJV relating to negotiations of a licensing  
9 agreement for the use of the Potato Corner Intellectual Property;  
10 Amended Joint Venture Agreement; Franchise Agreements;  
11 FDDs

12 vi. Defendants’ Supporting Evidence: Defendant relies upon the  
13 same record evidence to dispute both Elements 1 and 2

14 b. Element No. 3: That Defendant has not paid Plaintiff royalties or any  
15 other compensation to Plaintiff for the use of the Potato Corner  
16 Intellectual Property

17 i. This element is disputed.

18 ii. Nature of Dispute: Legal and Factual

19 iii. Plaintiff’s Position Statement: Plaintiff does not know  
20 what the issue is here.

21 iv. Defendants’ Position Statement: Defendant disputes  
22 Element 3 for the same reason they dispute Element 1.

23 v. Plaintiff’s Supporting Evidence: Financial statements  
24 produced by Defendants showing that there have been no  
25 royalty fees paid to SPAVI; Testimony of Koren, Plaintiff  
26 executives Gregorio (Plaintiff’s CEO), Concepcion (Plaintiff’s  
27 COO charged with US operations), Tan (Director responsible

for international franchising), Jose Magsaysay (Cinco's CEO)

vi. Defendants' Supporting Evidence: Defendant relies upon  
the same record evidence to dispute both Elements 1 and 2.

c. Element No. 4: The reasonable value for the use of the Potato Corner  
Intellectual Property that was provided.

i. This element is disputed.

ii. Nature of Dispute: Factual

v. Plaintiff's Supporting Evidence: Financial statements produced  
by Defendants showing that there have been no royalty fees paid  
to SPAVI; Testimony of Koren, Plaintiff executives Gregorio  
(Plaintiff's CEO), Concepcion (Plaintiff's COO charged with  
US operations), Tan (Director responsible for international  
franchising), Jose Magsaysay (Cinco's CEO); Notarized Deeds  
signed by seller and buyer; USPTO filings including  
Registrations and Assignments

iii. Defendants' Supporting Evidence: The reasonable value  
is nominal or \$1.00 because the 15-year track record is equal  
payment of royalties and service fees (followed by and waiver in  
favor of growth). See McCarthy, supra, § 18:15 ("It is  
elementary ancient law that an assignee never stands in any  
better position than his assignor...") (citation omitted).

**4) Claim 10 (from FAC, Dkt. 65): Misappropriation of Trade Secrets**

a. Element No. 1: That SPAVI owned the recipes, ingredients, and  
ingredient allocations for its proprietary flavorings, the identities of its  
suppliers, and other know-how, procedures, and processes used and  
employed at Potato Corner outlets, including outlets owned and/or

operated by Defendants (“Potato Corner Trade Secrets”)

i. This element is disputed.

ii. Nature of Dispute: Legal and Factual

~~iii. (If legal dispute) Plaintiff's Position Statement: (insert)~~

iii. Plaintiff's Position Statement: SPAVI owned or controlled specific ingredients of the proprietary flavorings, the quantities of such ingredients, and the relative proportion of such ingredients,, including all steps taken to combine and mix specific ingredients, comprise of trade secrets.

iv. Defendants' Position Statement: As a threshold matter, a trade secret could only comprise “information, including a formula, pattern, compilation, program, device, method, technique, or process.” Cal. Civ. Code 3426.1(d). SPAVI has not identified what “information” it claims Defendants misappropriated. “Flavors” is not information, and packaging is an object. Thus, SPAVI cannot carry its burden to “identify the trade secrets and carry the burden of showing they exist.” *InteliClear, LLC v. ETC Global Holdings, Inc.*, 978 F.3d 653, 658. A flavor is an idea and catch-all phrase, which is not protected. *Id.*; *Silvaco Data Systems v. Intel Corp.*, 184 Cal. App. 4th 210, 220 (2010). Moreover, the plaintiff must “own” the trade secret—meaning the plaintiff either has title to the secret or has knowledge of the know how and licenses it with a confidentiality obligation. *See Sinclair v. Aquarius Electronics, Inc.*, 42 Cal.App.3d 216, 225-228 (1974) (trade secret licensing involves sharing sensitive, undisclosed information). A conclusory assignment from a prior reseller

1 with no knowledge of the trade secret does not establish the  
2 required chain of title. *Memry Corp. v. Kentucky Oil*  
3 *Technology, N.V.*, No. C-04-03843 RMW, 2006 WL 3734384,  
4 at \*5 (N.D. Cal. 2006). Here, there is no evidence of the  
5 existence or ownership of trade secret information

- 6 v. Plaintiff's Supporting Evidence: SPAVI owns all  
7 trademarks, service marks, recipes, trade secrets, and other  
8 intellectual property affiliated with the Potato Corner brand.  
9 SPAVI acquired all of this intellectual property from the then-  
10 owners, Cinco Corporation ("Cinco"), in a deal that closed in  
11 2022. Additional evidence includes: Notarized Deeds signed  
12 by seller and buyer; USPTO filings including Registrations  
13 and Assignments, testimony of Gregorio (Plaintiff's CEO),  
14 Magsaysay (Cinco's CEO), Tan (Director responsible for  
15 international franchising),  
16 vi. Defendants' Supporting Evidence: the following category,  
17 which is defined above, captures the key phase and supporting  
18 evidence: SPAVI Parties' Tortious Conduct. Among other  
19 things, Cinco Corporation's consent to reverse engineering of  
20 spices means that Plaintiff's predecessor did not know the  
21 alleged secret, did not own or have a trade secret license, and  
22 did not assign one to Plaintiff.

- 23 b. Element No. 2: That these Potato Corner Trade Secrets were a secret at  
24 the time of the misappropriation

- 25 i. This element is disputed  
26 ii. Nature of Dispute: factual  
27 iii. Plaintiff's Supporting Evidence: The Potato Corner brand

1 is identifiable by its preparation of fries, which uses seven  
2 proprietary flavorings sold to SPAVI by one single supplier,  
3 the identity of which is confidential and not publicly known.  
4 The ingredients are not known outside the Potato Corner  
5 family, and the specific recipe (and proportions of each  
6 ingredient) are also kept secret. SPAVI maintains and benefits  
7 from the secrecy of the recipes and ingredient allocation of  
8 each flavoring and requires its supplier to protect that secrecy.  
9 The only persons with access to the flavoring packets  
10 delivered from the supplier (with ingredients listed but not  
11 quantities and proportions) are those bound by confidentiality  
12 and secrecy in favor. Anyone with access to the flavoring  
13 packages and ingredients is prohibited from using them for a  
14 purpose other than for the Potato Corner brand's benefit and  
15 may not misappropriate or take for themselves any of the  
16 proprietary information embodied in those packets. Additional  
17 evidence includes: The Franchise Disclosure Documents  
18 ("FDD"); agreements with the Franchisees; testimony of  
19 Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO),  
20 Ybanez (Plaintiff's General Counsel), Tan (Director  
21 responsible for international franchising), and Franchisees  
22 iv. Defendants' Supporting Evidence: supplier agreements;  
23 third-party Ferna's sale of spices to the public that SPAVI  
24 contends are secret; Cinco Corporation's consent for reverse  
25 engineering of spices (meaning it did not know the alleged  
26 secret and thus did not have a trade secret license); and  
27 SPAVI's lack of evidence demonstrating it maintain secrecy,

1 including but not limited to non-disclosure agreements,  
2 physically locked storage of product and recipes alleged to be  
3 trade secrets, use of two-factor authentication to access online  
4 storage of recipes alleged to be trade secrets, monitoring and  
5 securing of employees' and agents' communications and use  
6 technology to transfer data to third parties, such as by way of  
7 flash drives and cloud storage.

8 c. Element No. 3: That Defendants improperly acquired, used, or  
9 disclosed the Potato Corner Trade Secrets

10 i. This element is disputed

11 ii. Nature of Dispute: Legal and Factual

12 ~~iii. Plaintiff's Position Statement: [insert]~~

13 iii. Plaintiff's Position Statement: Defendants wrongfully  
14 used or disclosed Potato Corner Trade Secrets by transferring  
15 them to Third Parties despites acknowledging repeatedly that  
16 they consisted of trade secrets in writings.

17 iv. Defendants' Position Statement: By statute, reverse  
18 engineering is fair competition. It follows that, to establish  
19 wrongful acquisition, use or disclosure, Plaintiff must establish  
20 a legal duty in the acquisition of a product not to reverse  
21 engineer it. However, Plaintiff denies and cannot establish any  
22 legal duty between Plaintiff and Defendants as it affirmatively  
23 alleges they are not fiduciaries, it did not assume obligations  
24 and there is no privity of contract establishing any  
25 confidentiality obligation between them

26 v. Plaintiff's Supporting Evidence: Both the JVA and AJVA  
27 contain an agreement to agree on a Master License Agreement.

1 However, there was never a written license agreement between  
2 Plaintiff and Defendants. After SPAVI acquired the Potato  
3 Corner intellectual property rights, which included the Potato  
4 Corner Trade Secrets, SPAVI engaged in a good faith and  
5 exhaustive attempt to negotiate the terms of a written license  
6 with Defendants. Defendant Guy Koren engaged and  
7 participated in this negotiation, but was unwilling to agree to  
8 any minimally commercially viable licensing terms. Moreover,  
9 Guy Koren refused to, engage in reasonable and good faith  
10 negotiation. Instead, he only offered royalty rates and license  
11 fees that were more than 90% below what Koren had agreed to  
12 be reasonable licensing fees over a decade prior. Koren also  
13 repeatedly disengaged from the negotiation process, but still  
14 was utilizing the Potato Corner Intellectual Property.  
15 Therefore, SPAVI terminated the license agreement as of May  
16 31, 2024. After the termination, Defendants improperly,  
17 illegally, and unfairly misappropriated the flavoring packages  
18 in their possession, which should have been returned  
19 immediately following receipt of the May 31, 2024,  
20 Termination Letter, and transferred possession of those  
21 proprietary packages of flavorings to a third party for the  
22 purpose of reverse-engineering the flavorings directly from the  
23 packages themselves. Defendants also developed “Undercover  
24 Fries” to roll out the reverse engineered fries to compete with  
25 the Potato Corner brand while, at the same time, operating  
26 Potato Corner outlets and being in possession of the Potato  
27 Corner Intellectual Property, including the Potato Corner

1 Trade Secrets. Additional evidence includes: Franchisee  
2 Photographs; Testimony from former franchisees, Concepcion  
3 (Plaintiff's COO charged with US operations), Koren,  
4 investigator; the Franchise Agreements; FDDs; and leases, of  
5 PCJV over the years.

6 i. Defendants' Supporting Evidence: Superseding Joint Venture  
7 (2008–2010), Alternative Licensing Arrangements and Ongoing  
8 Ratification (2011–2012), Formalization and Modification of the  
9 Joint Venture (2012), LA Group Partnership Agreement and  
10 Evolving Business Dynamics and Terms (2013–2018), Dispute,  
11 Litigation, and State Court Proceedings (2018 and Beyond), and  
12 Ongoing Annual Ratification and Regulatory Compliance.

13 d. Element No. 4: That SPAVI was harmed and/or Defendants were  
14 unjustly enriched by its use of the Potato Corner Trade Secrets

15 i. This element is disputed

16 ii. Nature of Dispute: Factual

17 iii. Plaintiff's Supporting Evidence: The secrecy of the Potato  
18 Corner Trade Secrets holds value to SPAVI. The reverse  
19 engineering was an unauthorized taking of a trade secret for  
20 Defendants own personal benefit to open a competing store  
21 "Undercover Fries". Additional evidence includes: Franchisee  
22 Photographs; Testimony from former franchisees, Gregorio  
23 (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with  
24 US operations), Ybanez (Plaintiff's General Counsel), Tan  
25 (Director responsible for international franchising), and Koren;  
26 the Franchise Agreements; FDDs; leases, of PCJV over the  
27 years; and financial statements of Defendants.



iv. Defendants' Supporting Evidence: Defendants  
incorporate their above factual positions

e. Element No. 5: Defendants acquisition, use, or disclosure of the Potato  
Corner Trade Secrets was a substantial factor in causing Plaintiff's  
harm or for Defendants to be unjustly enriched.

i. This element is disputed

ii. Nature of Dispute: Factual

iii. Plaintiff's Supporting Evidence: Defendants'  
misappropriation, wrongful disclosure, and/or repudiation of  
the existence of SPAVI's above-described trade secrets and  
proprietary information, SPAVI has been damaged and  
continues to be damaged. Evidence includes: Defendants  
financials for the period in question May 31, 2024 through the  
present; testimony of Gregorio (Plaintiff's CEO), Ybanez  
(Plaintiff's General Counsel), Concepcion (Plaintiff's COO  
charged with US operations), Tan (Director responsible for  
international franchising), Koren, franchisees.

iv. Defendants' Supporting Evidence: Defendants  
incorporate their above factual positions

**I. Defendants' Affirmative Defenses to be Tried by a Jury**

**1) Affirmative Defense No. 1: Waiver (asserted by all Defendants as to  
all claims alleged by SPAVI against them)**

a. Element No. 1: Through implied and/or express conduct, SPAVI  
knowingly waived a valid right, privilege, advantage, or benefit  
allegedly conferred upon it and its attempt to enforce that right,  
privilege, advantage, or benefit is thus barred.

i. The parties dispute that this element is satisfied.

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1           ii. Nature of Dispute: Factual and Legal  
2           iii. Defendants' Position Statement: The specific rights or  
3           privileges that have been waived include the alleged right to  
4           terminate PCJV USA, LLC's right to use the U.S. Potato  
5           Corner marks, and the alleged right to claim that the purchased  
6           seasoning packages were secret and improperly acquired.  
7           Plaintiff's enforcement waiver is based on Plaintiff and  
8           Plaintiff's predecessor's knowing acquiescence in PCVJ USA,  
9           LLC's use and quality control of Potato Corner in the United  
10          States, including before and after Plaintiff's alleged acquisition  
11          of the same. *See McCarthy, supra*, § 18:15 ("It is elementary  
12          ancient law that an assignee never stands in any better position  
13          than his assignor,' thus once an assignee has notice of an  
14          injunction against the assignor, it is bound to comply.")  
15          (citation omitted). Plaintiff's predecessor acquiesced for years  
16          in PCJV USA, LLC's use and quality contract. The fact of  
17          Plaintiff's due diligence, negotiations, and alleged transaction  
18          with Cinco Corporation before allegedly acquiring the U.S.  
19          trademarks put Plaintiff on actual notice of PCJV USA, LLC's  
20          use and control rights, and in response Plaintiff represented  
21          that it would be bound by any agreements related to the  
22          licensing of Potato Corner intellectual property in the United  
23          State, and thereafter did not attempt to enforce any alleged  
24          contrary right for years and then denied acquiring PCJV USA,  
25          LLC's use and quality control rights. As to the commercial  
26          sale of packaged seasonings, both Plaintiff and its predecessor  
27          have known for years that they did not own them, that they

1 were publicly available for purchase in the market, and that it  
2 was not improper to reverse engineer them, and Plaintiff  
3 thereafter fulfilled an order and agreed to fulfill a second  
4 order even after the alleged termination.

5 iv. Plaintiff's Position Statement: Defendants fail to identify any  
6 specific right or privilege or benefit that was waived. The only  
7 relationship between SPAVI and any Defendant, was that of  
8 licensor to licensee, pursuant to an implied license. The only  
9 right that SPAVI possessed was to terminate or negotiate. It  
10 decision to wait to negotiate with Koren is not a waiver of  
11 its right to terminate. Ironically, it is SPAVI that is alleging  
12 that Defendants waived their right to claim the AJVA confers  
13 perpetual licensing rights, after negotiating the terms of a  
14 written license that would confer narrower rights for three  
15 years without once taking the position that it did not need a  
16 written license – a three year period during which much  
17 occurred in reliance on Koren's assent to the need for a  
18 written license.

19 v. Defendants' Supporting Evidence: The PCJV USA Parties  
20 intend to rely on testimony and also on a robust written  
21 evidentiary record which demonstrates the parties' mutual  
22 intentions and the evolution of their business relationship from  
23 the inception through the present. The following categories  
24 and chronology capture the key phases and supporting  
25 evidence: *1. Superseding Joint Venture (2008–2010)*,  
26 including (a) testimony and documentary evidence (i.e.,  
27 communications and the original NKM Master License

Agreement) showing the parties' shared intent to bring Potato Corner to the U.S., (b) exhibits reflecting the transition from a simple license to a joint venture partnership in 2009-2010, including meeting minutes, correspondence, and planning documents from April/May 2010, (c) evidence of the July 2010 formation of PCJV USA, LLC as the master franchisor for all U.S. and Israel operations, with PCJV granted all rights to use and license the U.S. intellectual property ("Superseding Joint Venture (2008-2010)"); 2. *Alternative Licensing Arrangements and Ongoing Ratification (2011-2012)*, including (a) documents and communications (i.e., DLA Piper records, regulatory filings, and Franchise Disclosure Documents) evidencing the parties' reliance on an alternative license agreement in 2011 for Cinco's benefit, which was referenced and ratified in annual FDDs and other regulatory filings, (b) evidence of the 2012 Master Services Agreement, which authorized the LA Group to license the brand for an indefinite duration, further reflecting the parties' mutual understanding and operational structure ("Alternative Licensing Arrangements and Ongoing Ratification (2011-2012)"); 3. *Formalization and Modification of the Joint Venture (2012)*, including (a) executed copies of the Joint Venture Agreement (JVA) and the LLC Operating Agreement from August 2012, memorializing the parties' rights, obligations, and governance structure, (b) the First Amendment to the JVA (October 2012), with supporting meeting minutes, documenting specific modifications to the

1 parties' governance protocols only ("Formalization and  
2 Modification of the Joint Venture (2012)"); 4. *LA Group*  
3 *Partnership Agreement and Evolving Business Dynamics and*  
4 *Terms (2013–2018)*, including (a) the 2013 written partnership  
5 agreement entered into by the LA Group, reflecting further  
6 refinement of the parties' roles and expectations, (b)  
7 communications, board minutes, and negotiation records from  
8 2015–2018 detailing ongoing discussions about operational  
9 challenges, restructuring proposals (including Koren's  
10 potential acquisition of Cinco shares or the LA Group's  
11 acquisition of 100% of PCJV/PCI Trading), and a  
12 contemplated new Master License Agreement for Cinco's  
13 benefit in exchange for 100% ownership in PCJV/PCI Trading  
14 ("LA Group Partnership Agreement and Evolving Business  
15 Dynamics and Terms (2013–2018)"); 5. *Dispute, Litigation,*  
16 *and State Court Proceedings (2018 and Beyond)*, including (a)  
17 evidence of the April 2018 board meeting and resolutions that  
18 precipitated the state court litigation, including verified  
19 pleadings, declarations, and court filings that set forth the  
20 parties' mutual intentions and positions during the dispute,  
21 including also, if necessary, settlement negotiation discussions  
22 and the settlement and other agreements reached among the  
23 parties, (b) additional documents and testimony from the state  
24 court proceedings, including verified cross-complaints,  
25 declarations, and orders, which further clarify the parties'  
26 understanding and course of conduct ("Dispute, Litigation, and  
27 State Court Proceedings (2018 and Beyond)"); 6. *Ongoing*

1 *Annual Ratification and Regulatory Compliance*, including  
2 FDDs, regulatory filings, and correspondence with state  
3 agencies, evidencing the parties' continued mutual recognition  
4 of the licensing and franchising structure, as well as the  
5 ratification of their agreements and operational practices  
6 ("Ongoing Annual Ratification and Regulatory Compliance");  
7 *7. SPAVI Parties' Tortious Conduct*, including a  
8 comprehensive body of documents and testimony which  
9 demonstrates the SPAVI parties' coordinated and wrongful  
10 actions aimed at appropriating the business operations, supply  
11 chain, and goodwill of the Potato Corner USA franchise  
12 system for their own benefit, such as (a) testimony and  
13 documentary evidence showing SPAVI's deliberate efforts to  
14 undermine and take over PCJV's established franchise  
15 network in the United States, (b) communications, internal  
16 memoranda, and correspondence reflecting SPAVI's outreach  
17 to PCJV franchisees, including direct offers of temporary  
18 licenses and inducements to sever ties with PCJV, as detailed  
19 in termination letters and related notices, (c) evidence of  
20 SPAVI's attempts to bypass PCJV's role as franchisor by  
21 negotiating directly with third-party franchisees, thereby  
22 disrupting existing contractual relationships and causing  
23 business uncertainty, (d) documents and witness statements  
24 establishing SPAVI's interference with PCI Trading's  
25 procurement and distribution of supplies, (e) testimony  
26 regarding SPAVI's refusal to supply powders to PCJV and its  
27 franchisees following the purported termination of the license,

thereby jeopardizing ongoing operations and franchisee livelihoods, (f) evidence of SPAVI's efforts to control or redirect supplier relationships, including attempts to obtain confidential supplier information and to assert exclusive rights over the sourcing and distribution of Potato Corner products in the U.S., (g) testimony and exhibits documenting SPAVI's use of the established Potato Corner USA brand reputation and customer base to promote its own interests, including public statements, regulatory filings, and direct communications with franchisees and suppliers, (h) rather than simply seeking declaratory relief, SPAVI's own conduct has interjected potential confusion in the marketplace, including the unauthorized use of trademarks, solicitation of franchisees, and dissemination of misleading information regarding the status of the franchise system and intellectual property rights, (i) documents showing SPAVI's attempts to claim ownership of the goodwill and business relationships cultivated by PCJV and PCI Trading over years of operation, despite the absence of any direct contractual relationship with many U.S. franchisees prior to the dispute, (j) evidence of the resulting harm to PCJV, PCI Trading, and the broader franchise network, including lost business opportunities, damaged supplier relationships, and erosion of brand value and goodwill ("SPAVI Parties' Tortious Conduct").

- vi. Plaintiff's Supporting Evidence: testimony of the negotiators from 2021 through 2024 including Mr. Gregorio and Mr. Tan (from SSPAVI), their correspondence with Koren and his

testimony, the NKM License agreement and the JVA and  
AJVA (none of which SPAVI is a party to or conferred  
rights that SPAVI is responsible for. The absence of  
contractual privity or otherwise is what disproves this  
affirmative defense.

b. Causes of Action Barred by this Affirmative Defense: all of SPAVI's  
causes of action

**2) Affirmative Defense No. 2: In Pari Delicto (asserted as to all of  
SPAVI's causes of action).**

a. Element No. 1: Plaintiff and Defendants have substantially equal  
economic strength.

i. This element is not in dispute.

b. Element No. 2: Plaintiff is at least equally responsible for the harmful  
conduct as Defendants.

i. Disputed Status of Element 2: The parties dispute that this  
element is satisfied.

ii. Nature of Dispute: Legal and Factual

iii. Defendants' Position Statement: Defendants' elements precisely  
follow CACI No. 3431

iv. Plaintiff's Position Statement: the statement of these elements  
omit that to apply "in pari ~~director~~dilecto" requires that  
SPPAVI have engaged in "illegal, fraudulent, or inequitable  
conduct," and that has never been alleged, nor is there any  
evidence of this.

v. Defendant's Supporting Evidence: the following category,  
which is defined above, captures the key phase and supporting  
evidence: SPAVI Parties' Tortious Conduct.



- 1 vi. Plaintiff's Supporting Evidence: testimony of the negotiators  
2 from 2021 through 2024 including Mr. Gregorio and Mr. Tan  
3 (from SSPAVI), their correspondence with Koren and his  
4 testimony, the NKM License agreement and the JVA and  
5 AJVA (none of which SPAIVI is a party to or conferred rights  
6 that SPAIVI is responsible for. The absence of contractual  
7 privity or otherwise is what disproves this affirmative defense.
- 8 c. Element No. 3: Plaintiff was not held by economic pressure to engage  
9 in harmful conduct.
- 10 i. Disputed Status of Element 3: The parties dispute that this  
11 element is satisfied.
- 12 ii. Nature of Dispute: Legal and Factual.
- 13 iii. Defendants' Position Statement: Defendants' elements precisely  
14 follow CACI No. 3431.
- 15 iv. Plaintiff's Position Statement: the statement of these elements  
16 omit that to apply "in pari dilecto" requires that SPPAVI have  
17 engaged in "illegal, fraudulent, or inequitable conduct," and  
18 that has never been alleged, nor is there any evidence of this.
- 19 v. Defendant's Supporting Evidence: documents and testimony  
20 including and related to (1) PCJV USA, LLC's right to use  
21 Potato Corner IP and quality control rights related thereto under  
22 PCJV USA, LLC's governing documents, including agreements  
23 and related negotiations, franchise disclosure documents and  
24 board minutes; (2) the parties' course of conduct regarding  
25 PCJV USA, LLC's use and control of U.S. Potato Corner  
26 trademarks; (3) the fact of SPAIVI's due diligence, negotiations,  
27 and alleged acquisition of Cinco Corporation's assets and

liabilities; (4) SPAVI's denial of acquiring any IP rights or obligations under PCJV's governing documents; (5) SPAVI's statement that it would be bound by a settlement with Cinco; (6) SPAVI's knowing failure to do anything for years regarding PCJV USA Parties' full exercise of its right to use and quality control; and (7) SPAVI's decision to renege on a purchase order, creating a short-term supply chain problem.

vi. Plaintiff's Supporting Evidence: testimony of the negotiators from 2021 through 2024 including Mr. Gregorio and Mr. Tan (from SSPAVI), their correspondence with Koren and his testimony, the NKM License agreement and the JVA and AJVA (none of which SPAAVI is a party to or conferred rights that SPAVI is responsible for. The absence of contractual privity or otherwise is what disproves this affirmative defense.

d. Causes of Action Barred by this Affirmative Defense: all of SPAVI's causes of action.

**3) Affirmative Defense No. 3: Statute of Limitations. (asserted as to all of SPAVI's causes of action)**

a. Element No. 1: SPAVI (either independently or as successor-in-interest to Cinco) knew, should have known, or had constructive notice of PCJV USA Parties' alleged infringing conduct over three years before SPAVI filed this action.

i. The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual

iii. Defendant's Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative

Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties’ Tortious Conduct.

- iv. Plaintiff’s Supporting Evidence: Testimony off Mr. Gregorio (CEO of SPAVI) regarding termination of negotiations and sending the Termination Letter hours before this lawsuit was filed, such that, unless the statute of limitations is calculated by way of hours rather than years, this defense is an impossibility.

- b. Causes of Action Barred by this Affirmative Defense: all of SPAVI’s causes of action.

**4) Affirmative Defense No. 4: Abandonment through Assignment in Gross.**

- a. Element No. 1: Cinco Corporation assigned U.S. Potato Corner trademarks to SPAVI without the goodwill associated with the trademarks.
- i. The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual and Legal
- iii. Defendants’ Supporting Legal Position: Trademarks cannot be assigned or transferred apart from the goodwill of the business they represent. *See Federal Treasury Enterprise Sojuzplodoimport v. Spirits Intern. N.V.*, 623 F.3d 61, 68 (2d Cir. 2010); *Glow Industries, Inc. v. Lopez*, 273 F. Supp. 2d 1095, 1108 (C.D. Cal. 2003); *Hallmark Hardwoods, Inv.* [4y](#). *Omni Wood Product, LLC*, 2011 WL 13176098, \*15 (C.D. Cal.

2011); *In re Impact Distributors, Inc.*, 260 B.R. 48, 53-55 (S.D. Fla. 2001); *Money Store v. Harriscorp Fin., Inc.*, 689 F.2d 666, 670 (7th Cir. 1982).

iv. Plaintiff's Supporting Legal Position: this is a factual dispute.

Plaintiff argues that it did receive goodwill, while Defendants argue that we did not.

v. ~~Defendants' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.~~ Defendants' Supporting Evidence: documents and testimony including and related to (1) Defendants' senior use and quality control of U.S. Potato Corner trademarks; (2) PCJV USA, LLC's governing documents, including agreements and related negotiations, franchise disclosure documents and board minutes; (3) the parties' course of conduct regarding PCJV USA, LLC's use and control of U.S. Potato Corner trademarks; (4) SPAVI's knowledge of the same; (5) Defendants' Membership Interest Purchase Agreement ("MIPA") with Cinco acquiring all of Cinco's Interests in and any and all rights "attached" thereto unencumbered by a need for a license from any third party; and (6) the fact of SPAVI's due diligence, negotiation, and alleged acquisition of Cinco Corporation's assets and liabilities, and denial of acquiring PCJV's Potato Corner franchise business and any IP rights or obligations under PCJV's governing documents.

vi. Plaintiff's Supporting Evidence: the deeds filed with the USPTO, proof of intent to continue using the marks,, including plans to expand rapidly within the US (testimony of SPAVI

executives charged with this expansion, including Mr. Gregorio,  
Mr. Tann, and Mr. Concepcion, the COO.)

- b. Causes of Action Barred by this Affirmative Defense: SPAVI's causes  
of action for Trademark Infringement (15 U.S.C. § 1114), Trademark  
Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and  
Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark  
Infringement (15 U.S.C. § 1114), Contributory Trademark and False  
Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark  
Infringement, Declaratory Relief and Unfair Competition (Bus. &  
Prof. Code § 17200).

**5) Affirmative Defense No. 5: Abandonment through Naked Licensing.**

- a. Element No. 1: SPAVI Parties (including Cinco's) alleged licensed use  
of U.S. Potato Corner trademarks to PCJV USA Parties.
- i. This element is disputed.
  - ii. Nature of the dispute: Legal
  - iii. Defendants' Position Statement: Defendants assert both  
ownership and use rights arising from naked licensing, i.e.,  
authorization to use without adequate control. Ownership arises  
from Cinco Corporation's naked license because it barred the  
sale of any trademark rights to Plaintiff, and the PCJV USA  
Parties acquired all of Cinco Corporation's Interests and rights  
in Potato Corner in the United States in their settlement and  
MIPA. Ownership also arises from Plaintiff's naked licensing  
because PCJV USA, LLC is a senior user of the mark, including  
because Plaintiff never had any right to control Potato Corner in  
the United States, did not exercise control over Potato Corner in  
the United States, and had no grounds to believe PCJV USA,

1 LLC would listen to or take any instruction from SPAVI.

- 2 iv. Plaintiff's Supporting Legal Position: the wording of this  
3 element, however, is going to be confusing to a jury. If it is  
4 PCJV's position that it was not even a licensee as of May 31,  
5 2024, the damages calculation will change considerably.

- 6 b. Element No. 2: SPAVI Parties (including Cinco) did not exercise  
7 adequate control over PCJV USA Parties' use of U.S. Potato Corner  
8 trademarks.

9 i. The parties dispute that this element is satisfied.

10 ii. Nature of Dispute: Factual and Legal.

11 ~~iii. Defendant's Supporting Legal Position: [insert]~~

12 iii. Defendant's Supporting Legal Position: Defendants assert both  
13 ownership and use rights arising from naked licensing, i.e.,  
14 authorization to use without adequate control. Ownership arises  
15 from Cinco Corporation's naked license because it barred the  
16 sale of any trademark rights to Plaintiff, and the PCJV USA  
17 Parties acquired all of Cinco Corporation's Interests and rights  
18 in Potato Corner in the United States in their settlement and  
19 MIPA. Ownership also arises from Plaintiff's naked licensing  
20 because PCJV USA, LLC is a senior user of the mark, including  
21 because Plaintiff never had any right to control Potato Corner in  
22 the United States, did not exercise control over Potato Corner in  
23 the United States, and had no grounds to believe PCJV USA,  
24 LLC would listen to or take any instruction from SPAVI.

- 25 iv. Plaintiff's Supporting Legal Position: First, this is an incorrect  
26 statement of the law, as the focus is less so on the use of the  
27 Marks, but more so on the nature and quality of the goods and/or

1 services sold by the licensee. Second, though unsatisfying in its  
2 failure to conclusively resolve the debate, in the Ninth Circuit  
3 this defense likely requires a showing of clear and convincing  
4 evidence. FreecycleSunnyvale v. Freecycle Network, 626 F.3d  
5 509, 514 (9th Cir. 2010).

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6 v. Defendants' Supporting Evidence: the following categories,  
7 which are defined above, capture the key phases and supporting  
8 evidence: Superseding Joint Venture (2008–2010), Alternative  
9 Licensing Arrangements and Ongoing Ratification (2011–2012),  
10 Formalization and Modification of the Joint Venture (2012), LA  
11 Group Partnership Agreement and Evolving Business Dynamics  
12 and Terms (2013–2018), Dispute, Litigation, and State Court  
13 Proceedings (2018 and Beyond), Ongoing Annual Ratification  
14 and Regulatory Compliance, and SPAVI Parties' Tortious  
15 Conduct.

16 vi. Plaintiff's Supporting Evidence: Pursuant to the three  
17 considerations as to whether naked licensing has occurred, as  
18 summarized in F19 Franchising, LLC v. Endo Fitness LL, LLC,  
19 No. 2:23-CV-00185-MEMF-JCX, 2023 WL 11950376, at \*6–9  
20 (C.D. Cal. July 28, 2023), this is the one issue for trial in which  
21 the prior action is actually relevant, as it sets forth that efforts to  
22 exert control, as do the prior correspondence between Cinco and  
23 PCJV, and, moreover, the course of dealing prior to termination  
24 establishes the attempts to get control.

25 c. Causes of Action Barred by this Affirmative Defense: SPAVI's causes  
26 of action for Trademark Infringement (15 U.S.C. § 1114), Trademark  
27 Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and  
28

Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark Infringement (15 U.S.C. § 1114), Contributory Trademark and False Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark Infringement, Declaratory Relief and Unfair Competition (Bus. & Prof. Code § 17200).

**6) Affirmative Defense No. 6: Senior Use.**

~~a. Element No. 1: Defendants were the first to use the U.S. Potato Corner trademarks in the United States.~~

~~i. The parties dispute that this element is satisfied.~~

~~ii. Nature of Dispute: Legal and factual.~~

~~iii. Defendant's Legal Position Statement: "The first to use a mark in an area is deemed the 'senior' user and has the right to enjoin 'junior users from using confusing similar marks in the same industry or market or within the senior user's natural zone of expansion." *Optimal Pets, Inc. v. Nutri Vet, LLC*, 877 F. Supp. 953, 959 (C.D. Cal. 2012).~~

~~iv. Plaintiff's Legal Position Statement: See 15 USC § 1055. This argument is not made in good faith. It is also law of the case.~~

~~v. Defendants' Supporting Evidence: [insert]~~

~~vi. Plaintiff's Supporting Evidence: Registrations and testimony of Koren and Mr. Magsaysay~~

~~b. Element No. 2: SPAVI intends to use the U.S. Potato Corner trademarks in the United States.~~

~~i. The parties dispute that this element is satisfied.~~

~~ii. Nature of Dispute: Legal and factual.~~

~~iii. Defendants' Legal Position Statement: "The first to use a mark in an area is deemed the 'senior' user and has the right to enjoin~~

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“junior users from using confusing similar marks in the same industry or market or within the senior user’s natural zone of expansion.” *Optimal Pets, Inc. v. Nutri-Vet, LLC*, 877 F. Supp. 953, 959 (C.D. Cal. 2012).

iv. Plaintiff’s Legal Position Statement: Unclear what the dispute is here other than factual.

v. Defendants’ Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond).

vi. Plaintiff’s Supporting Evidence: Testimony of Gregorio, Tan, Concepcion, and Shaikh and Hussein

~~e.g. Causes of Action Barred by this Affirmative Defense: SPAVI’s causes of action for Trademark Infringement (15 U.S.C. § 1114), Trademark Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark Infringement (15 U.S.C. § 1114), Contributory Trademark and False Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark Infringement, Declaratory Relief and Unfair Competition (Bus. & Prof. Code § 17200).~~

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**7)6) Affirmative Defense No. 7: Continuous Prior Use Within Remote Geographic Area.**

a. Element No. 1: Defendants continuously used the trademark, without

interruption, in the U.S.

i. The parties dispute that this element is satisfied.

ii. Nature of Dispute: Legal and factual.

iii. Defendants' Supporting Legal Position: (1) PCJV USA, LLC's is the senior use under *Sengoku*, including actual first use (restructure in 2009) and lawful first use, *see CreAgri, Inc. v. USANA Health Services, Inc.*, 474 F3d 626, 630 (9th Cir. 2007); (2) but for a license agreement, which SPAVI Parties disavow, PCJV USA, LLC's use inured to its own benefit; (3) Cinco Corporation did not control PCJV USA, LLC's use of the Potato Corner marks; and (4) SPAVI Parties did not control PCJV USA, LLC's use of the Potato Corner marks.

iv. Plaintiff's Supporting Legal Position: See 115 USC §1055. This argument is not made in good faith.

v. Defendants' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond).

vi. Plaintiff's Supporting Evidence: All evidence presented in Plaintiffs' case in chief will prove the defense of this.

b. Element No. 2: Defendants began using the trademark without knowledge of SPAVI's prior use elsewhere.

i. Disputed Status of Element 2: The parties dispute that this

1 element is satisfied.

2 ii. Nature of Dispute: Factual.

3 iii. Defendants' Supporting Evidence: the following categories,  
4 which are defined above, capture the key phases and supporting  
5 evidence: Superseding Joint Venture (2008–2010), Alternative  
6 Licensing Arrangements and Ongoing Ratification (2011–2012),  
7 Formalization and Modification of the Joint Venture (2012), LA  
8 Group Partnership Agreement and Evolving Business Dynamics  
9 and Terms (2013–2018), Dispute, Litigation, and State Court  
10 Proceedings (2018 and Beyond).

11 iv. Plaintiff's Supporting Evidence: Koren testimony, registrations.

12 c. Element No. 3: Defendants used the trademark before SPAVI  
13 published the registered trademark.

14 i. Disputed Status of Element 3: The parties dispute that this  
15 element is satisfied.

16 ii. Nature of Dispute: factual.

17 iii. Defendants' Supporting Evidence: the following categories,  
18 which are defined above, capture the key phases and supporting  
19 evidence: Superseding Joint Venture (2008–2010), Alternative  
20 Licensing Arrangements and Ongoing Ratification (2011–2012),  
21 Formalization and Modification of the Joint Venture (2012), LA  
22 Group Partnership Agreement and Evolving Business Dynamics  
23 and Terms (2013–2018), Dispute, Litigation, and State Court  
24 Proceedings (2018 and Beyond).

25 iv. Plaintiff's Supporting Evidence: 15 USC § 1055. This argument  
26 is not made in good faith

27 d. Causes of Action Barred by this Affirmative Defense: SPAVI's causes  
28

of action for Trademark Infringement (15 U.S.C. § 1114), Trademark Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark Infringement (15 U.S.C. § 1114), Contributory Trademark and False Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark Infringement, Declaratory Relief and Unfair Competition (Bus. & Prof. Code § 17200).

**8)7) Affirmative Defense No. 67: Mitigation.**

- a. Element No. 1: SPAVI failed to use reasonable efforts to mitigate alleged damages.
  - i. The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: Factual.
  - iii. Defendants' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
  - iv. Plaintiff's Supporting Evidence: Plaintiff looks forward to presenting the jury with every effort taken to get PCJV and Koren to either pay for or stop, finally, using this brand for which he has never paid to benefit from, whether that was negotiating a license, terminating the license or other attempts.
- b. Element No. 2: the amount by which damages would have been mitigated.
  - i. The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: Factual.
  - iii. Defendants' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. Plaintiff's Supporting Evidence: Testimony of Koren, Gregorio, Victor Tan, Financial documents.

c. Causes of Action Barred by this Affirmative Defense: All of SPAVI Parties' causes of action (to the extent they seek damages).

**98) Affirmative Defense No. 98: Senior Use Trademark Ownership**

a. Element No. 1: At the time of first lawful use, the partnership and JVA evidence co-ownership of the U.S. Potato Corner marks.

i. Disputed Status of Element 1: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Legal and factual.

iii. Defendants' Position Statement: The partnership and joint venture agreement between PCJV USA, LLC's LA Group and Cinco Group recognize and support per their terms and conditions that PCJV USA, LLC—the first actual, lawful, continuous and exclusive user of the U.S. Potato Corner marks—owns the U.S. Potato Corner marks (which was the LA Group's long-term security and consideration) at least until the parties executed the contemplated master license agreement (which was the Cinco Group's consideration) that they both agreed to enter into in accordance with their fiduciary and contractual obligations, but which still treated them as joint venture partners. *See Sengoku Works Ltd. v. RMC Int'l, Ltd.*, 96 F.3d 1217, 1219 (9th Cir. 1996); *Optimal Pets, Inc. v. Nutri-Vet, LLC*, 877 F. Supp. 953, 959 (C.D. Cal. 2012+1996); *cf. Precision Door Service, Inc. v. Bell*, No. C 02-01108 CW, 2002 WL 655053, at \*6 (N.D. Cal April 18, 2002). Given that Plaintiff is disavowing the license agreement—meaning the factual basis

1 upon which PCJV USA, LLC's use might inure to Cinco  
2 Corporation's benefit did not happen—the operative  
3 coownership agreements favor Defendants or, at minimum, are  
4 not dispositive as to ownership. Plaintiff does not get ownership  
5 by default because all exclusive users under *Sengoku* are alleged  
6 “related companies.” Under *Sengoku*, an alleged “related  
7 company” who is an exclusive user in the United States, gets to  
8 rebut that presumption, especially where, as here, the registrant  
9 filed an intent to use application that would only evidence senior  
10 use if the exclusive user's first actual and lawful use inured to its  
11 benefit. Under the partnership and joint venture agreement,  
12 which “vested” in the joint venture and exclusive user complete  
13 licensing rights and obligations in the United States, approval of  
14 franchise agreements, including as disclosed in FDDs,  
15 restrictions on transfer, payment of equal royalties and service  
16 fees, and lifetime rights to license and quality control over  
17 Potato Corner in the United States, it plainly supports ownership  
18 in the joint venture or, at minimum, is not dispositive. The jury  
19 is entitled to consider the following five factors used in the  
20 Ninth Circuit to help determine ownership as between PCJV  
21 USA, LLC, an exclusive domestic user, and Plaintiff, an  
22 assignee of a foreign registrant, which plainly demonstrate that  
23 PCJV USA, LLC owns the U.S. marks unless and until there  
24 was a meeting of the minds on an enforceable license  
25 agreement: (1) which party invented and affixed the mark to the  
26 product; (2) which party's name appeared with the trademark;  
27 (3) which party maintained the product's quality and uniformity;

(4) which party does the public identify with the product and make complaints to; and (5) which party possesses the goodwill associated with the product.

iv. Plaintiff's Position Statement: This misstates the Lanhan act and the rules of priority. *See -Yagu. And Sengoku.* [See 15 USC § 1055. This argument is not made in good faith. It is also law of the case.](#)

v. Defendants' Supporting Evidence: documents and testimony including and related to (1) DLA Piper's notification of Cinco Corporation's unlawful use of Potato Corner in the United States; (2) the State of California's Department of Business Oversight's Order sanctioning PCJV USA, LLC for Cinco Corporation's alleged prior use of Potato Corner in the United States; (3) the superseding and restructure agreement between Guy Koren and Jose Magsaysay vesting ownership of Potato Corner in their partnership; (4) the joint venture agreement vesting co-ownership of Potato Corner in the United States in PCJV USA, LLC; (5) control over Potato Corner in the United States being vested with and exercised by PCJV USA, LLC; (6) Potato Corner USA being affixed to Potato Corner in the United States; (7) consumer association of Potato Corner in the United States with PCJV USA, LLC, to whom complaints, if any, were lodged; (8) PCJV USA, LLC's creation, development and hold over the goodwill of Potato Corner in the United States for over a decade; (9) Cinco's lack of control of Potato Corner in the United States for over a decade; (10) Plaintiff's lack of control of Potato Corner in the United States after it allegedly acquired

1 the U.S. trademarks and before it registered additional Potato  
2 Corner trademarks; and (11) Plaintiff's suppression of evidence  
3 relevant to ownership.

4 vi. Plaintiff's Supporting Evidence: The registration and Koren's  
5 admissions regarding control. [Testimony of Koren and Mr.](#)  
6 [Magsaysay](#).

7 b. Element No. 2 (if Element No. 1 is not dispositive): The following  
8 factors demonstrate PCJV USA, LLC owns the U.S. Potato Corner  
9 Trademarks: (1) which party invented and affixed the mark to the  
10 product; (2) which party's name appeared with the trademark; (3)  
11 which party maintained the product's quality and uniformity; (4)  
12 which party does the public identify with the product and make  
13 complaints to; and (5) which party possesses the goodwill associated  
14 with the product.

15 i. Disputed Status of Element 3: The parties dispute that this  
16 element is satisfied.

17 ii. Nature of Dispute: Legal and factual.

18 iii. Defendants' Position Statement: Defendants incorporate the  
19 above legal position.

20 iv. Plaintiff's Position Statement: this is incomprehensible and not  
21 made in good faith.

22 v. Defendants' Supporting Evidence: Defendants incorporate the  
23 above ~~legal position~~[reference to evidentiary support](#).

24 vi. Plaintiff's Supporting Evidence: this is incomprehensible and  
25 not made in good faith. [Testimony of Gregorio, Tan,](#)  
26 [Concepcion, and Shaikh and Hussein](#).

27 c. Causes of Action Barred by this Affirmative Defense: SPAVI's causes



of action for Trademark Infringement (15 U.S.C. § 1114), Trademark Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark Infringement (15 U.S.C. § 1114), Contributory Trademark and False Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark Infringement, Declaratory Relief and Unfair Competition (Bus. & Prof. Code § 17200).

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**II. Counterclaimants and Third Party Plaintiffs’ (“PCJV USA Parties”) Causes of Action to be Tried by a Jury**

**1) Cause of Action No. 2: Inducing Breach of Contract**

b. Element No. 1: there was a contract between any one of the PCJV USA Parties, on the one hand, and any one of the Cinco parties (inclusive of the “Cinco Group” and “PCI Group”) or franchisees on the other hand.

i. Disputed Status of Element 1: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal

iii. PCJV USA Parties Legal Position Statement: The term for PCJV USA, LLC’s use of the U.S. Potato Corner trademarks “can be [i]mplied from the nature of the contract and circumstances surrounding it.” *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The “initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration, must always be that of implying a term of duration commensurate with the intentions of the parties . . . .” *Id.* at 727. Only

when “the nature of the contract and the totality of the surrounding circumstances give no suggestion as to any ascertainable term . . . , the obligations under the contract shall be terminable at will by any party upon reasonable notice after such a reasonable time has elapsed.” *Id.* Further, it is immaterial that SPAVI had full knowledge of the contracts’ terms. *See Jenni Rivera Enterprises, LLC v. Latin World Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783 (2019). Nor is SPAVI’s belief about the legal significance of facts or belief that the parties’ agreements are legally binding or has a different legal effect from what it is judicially held to have. *See Little v. Amber Hotel Co.*, 202 Cal. App. 4th 280, 302 (2011).

iv. Plaintiff’s Position Statement: as drafted it is impossible to know what the specific contract is that is at issue here. It has never been disclosed, and still undisclosed. Rather than jettison the claim or actually identify the contract, instead, Defendants’ solution is to fudge with obtuse language in the jury instructions, designed to confuse everyone, including the jury: “there was a contract between any one of the PCJV Plaintiffs and any one of the Cinco parties.” Indeed, the only contract that Cinco has been a party to with any of these Counterclaimants is the Settlement Agreement of the Prior Governance Action. There is no other written agreement between PCJV and Cinco, or between any other Counterclaimant and Cinco.

v. PCJV USA Parties’ Supporting Evidence: the following

categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

vi. SPAVI and Cinco Parties’ Supporting Evidence: Each of the agreements included in the trial exhibits and testimony of Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which will establish that none of the Counterclaimants – PCJV, PCIT, LA Group LLC, GK Capital, NKM, or Koren have any contract to which Cinco has privity.

c. Element No. 2: SPAVI knew of the contract.

i. Disputed Status of Element 2: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. PCJV USA Parties Legal Position Statement: “the contract” refers to each and every applicable contract, including all written, oral, and/or implied-in-fact agreements between the “Cinco Group” and/or “PCI Group,” on the one hand, and Cross-Complainants PCJV, PCI Trading, LA Group, GK Capital, NKM, and Koren, on the other hand, inclusive of the JVA/AJVA, LLC Agreement, license agreements, MSA (as restated, amended, modified, or appended over time through

1 PCJV meeting minutes, written communications of the PCJV  
2 Board, and/or representations made in FDDs); (2) the  
3 Settlement Documents between the “Koren Parties” and  
4 “Cinco Parties”; and (3) the franchise agreements PCJV  
5 entered with franchisees. Plaintiff’s position statement does  
6 not assert a legal argument

7 iv. SPAVI and Cinco’s Position Statement: as drafted it is  
8 impossible to know what the specific contract is at issue  
9 here. It has never been disclosed, and still undisclosed. So,  
10 when this element in the instructions says, “the contract,”  
11 whereas the prior element refers to some unidentified  
12 contract, as a matter of law, yes, this element is disputed. To  
13 the extent any actual contract ever existed between Cinco and  
14 these parties, the only one that is possible is the Settlement  
15 Agreement and corresponding agreement selling PCJV  
16 equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco  
17 has never been a party to any other contract with any of the  
18 Counterclaim Defendants, that is the only one that could  
19 possibly be at issue, but Defendants refuse to acknowledge  
20 this.

21 v. PCJV USA Parties’ Supporting Evidence: the following  
22 category, which is defined above, captures the key phase and  
23 supporting evidence: SPAVI Parties’ Tortious Conduct.

24 vi. SPAVI and Cinco Parties’ Supporting Evidence: Each of the  
25 agreements included in the trial exhibits and testimony of  
26 Mr. Gregorio, Mr. Tan, Ms. Victor, as well as Mr. Koren –  
27 all of which will establish that were aware of no contract

1 between none of the Counterclaimants – PCJV, PCIT, LA  
2 Group LLC, GK Capital, NKM, or Koren have any contract  
3 to which Cinco has privity. After the fact, now, having been  
4 sued, SPAVI will unequivocally testify that it had knowledge  
5 of the terms off the settlement and never saw the document  
6 until this case commenced.

7 d. Element No. 3: SPAVI intended to cause any one of the Cinco  
8 parties or franchisees to breach the contract

9 i. Disputed Status of Element 3: The parties dispute this  
10 element is satisfied.

11 ii. Nature of Dispute: factual and legal.

12 iii. PCJV USA Parties' Position Statement: Plaintiff's position  
13 statement does not address a legal issue concerning this  
14 element. To the extent Plaintiff's position statement  
15 addresses element 1, PCJV USA Parties incorporate their  
16 respective response here.

17 iv. Plaintiff's Position Statement: as drafted it is impossible to  
18 know what the specific contract is at issue here. It has never  
19 been disclosed, and still undisclosed. So, when this element  
20 in the instructions says, "the contract," whereas the prior  
21 element refers to some unidentified contract, as a matter of  
22 law, yes, this element is disputed. To the extent any actual  
23 contract ever existed between Cinco and these parties, the  
24 only one that is possible is the Settlement Agreement and  
25 corresponding agreement selling PCJV equity to GKK  
26 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
27 a party to any other contract with any of the Counterclaim

Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

- v. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
- vi. SPAVI's Supporting Evidence: Each of the agreements included in the trial exhibits and testimony of Mr. Gregorio, Mr. Tan, Ms. Victor, as well as Mr. Koren – all of which will establish that they were not aware of and had no intent to cause anyone to breach any contract. Also, the correspondence leading up to the termination of the license – Trial Exhibits 20-31 – also confirm the intent was to negotiate a license with PCJV, something for which years were spent in pursuit, to no avail.

e. Element No. 4: SPAVI's conduct caused any one of the Cinco parties to breach the contract

- i. Disputed Status of Element 4: The parties dispute this element is satisfied.
- ii. Nature of Dispute: factual and legal.
- iii. PCJV USA Parties' Supporting Legal Position: The term for PCJV USA, LLC's use of the U.S. Potato Corner trademarks "can be [i]mplied from the nature of the contract and circumstances surrounding it." *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The "initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration,

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1 must always be that of implying a term of duration  
2 commensurate with the intentions of the parties . . . .” *Id.* at  
3 727. Only when “the nature of the contract and the totality  
4 of the surrounding circumstances give no suggestion as to  
5 any ascertainable term . . . , the obligations under the contract  
6 shall be terminable at will by any party upon reasonable  
7 notice after such a reasonable time has elapsed.” *Id.* Further,  
8 it is immaterial that SPAVI had full knowledge of the  
9 contracts’ terms. *See Jenni Rivera Enterprises, LLC v. Latin*  
10 *World Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766,  
11 783 (2019). Nor is SPAVI’s belief about the legal  
12 significance of facts or belief that the parties’ agreements are  
13 legally binding or has a different legal effect from what it is  
14 judicially held to have. *See Little v. Amber Hotel Co.*, 202  
15 Cal. App. 4th 280, 302 (2011).

16 iv. Plaintiff’s Position Statement: First, this presumes Cinco  
17 breached a contract. The only contracts that have been  
18 identified as being “breached” are the unsigned licensee  
19 agreement and the AJVA. Neither document binds Cinco –  
20 indeed, that the AJVA constitutes an agreement to agree and  
21 not a contract has already been adjudicated and decided as  
22 law of the case. It is impossible to know what the specific  
23 contract is at issue here. To the extent any actual contract  
24 ever existed between Cinco and these parties, the only one  
25 that is possible is the Settlement Agreement and  
26 corresponding agreement selling PCJV equity to GKK  
27 Capital. (Trial Exhibit 1176.) Because Cinco has never been

a party to any other contract with any of the Counterclaim Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

- v. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.
- vi. SPAVI Parties' Supporting Evidence: The absence of evidence that Cinco was a party to, or breached, any contract with any of the Counterclaimants is the supporting evidence.

f. Element No. 5: any one of the PCJV USA Parties were harmed

- i. Disputed Status of Element 4: The parties dispute this element is satisfied.
- ii. Nature of Dispute: factual and legal.
- iii. PCJV USA Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.
- iv. Plaintiff's Position Statement: First, this presumes Cinco

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1 breached a contract. The only contracts that have been  
2 identified as being “breached” are the unsigned licensee  
3 agreement and the AJVA. Neither document binds Cinco –  
4 indeed, that the AJVA constitutes an agreement to agree and  
5 not a contract has already been adjudicated and decided as  
6 law of the case. It is impossible to know what the specific  
7 contract is at issue here. To the extent any actual contract  
8 ever existed between Cinco and these parties, the only one  
9 that is possible is the Settlement Agreement and  
10 corresponding agreement selling PCJV equity to GKK  
11 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
12 a party to any other contract with any of the Counterclaim  
13 Defendants, that is the only one that could possibly be at  
14 issue, but Defendants refuse to acknowledge this.

15 v. PCJV USA Parties’ Supporting Evidence: the following  
16 category, which is defined above, captures the key phase and  
17 supporting evidence: SPAVI Parties’ Tortious Conduct.

18 vi. SPAVI Parties’ Supporting Evidence: The absence of  
19 evidence that Cinco was a party to, or breached, any  
20 contract with any of the Counterclaimants is the supporting  
21 evidence, as there is no way any of the Counterclaimants  
22 could have been harmed.

23 g. Element No. 6: SPAVI’s conduct was a substantial factor in  
24 causing harm to any of the Counterclaimants.

25 i. Disputed Status of Element 6: The parties dispute this  
26 element is satisfied.

27 ii. Nature of Dispute: factual and legal.

- 1                   iii. PCJV USA Parties' Position Statement: Plaintiff's position  
2                   statement does not address a legal issue concerning this  
3                   element. To the extent Plaintiff's position statement  
4                   addresses element 1, PCJV USA Parties incorporate their  
5                   respective response here  
6                   iv. Plaintiff's Position Statement: Again, this presumes Cinco  
7                   breached a contract. The only contracts that have been  
8                   identified as being "breached" are the unsigned licensee  
9                   agreement and the AJVA. Neither document binds Cinco –  
10                  indeed, that the AJVA constitutes an agreement to agree and  
11                  not a contract has already been adjudicated and decided as  
12                  law of the case. It is impossible to know what the specific  
13                  contract is at issue here. To the extent any actual contract  
14                  ever existed between Cinco and these parties, the only one  
15                  that is possible is the Settlement Agreement and  
16                  corresponding agreement selling PCJV equity to GKK  
17                  Capital. (Trial Exhibit 1176.) Because Cinco has never been  
18                  a party to any other contract with any of the Counterclaim  
19                  Defendants, that is the only one that could possibly be at  
20                  issue, but Defendants refuse to acknowledge this.  
21                  v. PCJV USA Parties' Supporting Evidence: the following  
22                  categories, which are defined above, capture the key phases  
23                  and supporting evidence: Superseding Joint Venture (2008–  
24                  2010), Alternative Licensing Arrangements and Ongoing  
25                  Ratification (2011–2012), Formalization and Modification of  
26                  the Joint Venture (2012), LA Group Partnership Agreement  
27                  and Evolving Business Dynamics and Terms (2013–2018),  
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Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.

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- vi. SPAVI and Cinco's Supporting Evidence: SPAVI's only act that could have caused "harm" to any of the Counterclaimants is termination of the license, which it was permitted to do. The absence of evidence that Cinco was a party to, or breached, any contract with any of the Counterclaimants is the supporting evidence, as there is no way any of the Counterclaimants could have been harmed let alone as a result of any act by SPAVI.

**2) Cause of Action No. 3: Intentional Interference with Contractual Relations.**

- a. Element No. 1: there were various contracts, including contracts with the Cinco parties, franchisees, suppliers, and vendors,
- i. Disputed Status of Element 1: The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: Legal and factual
  - iii. PCJV USA Parties' Legal Position: The term for PCJV USA, LLC's use of the U.S. Potato Corner trademarks "can be [i]mplied from the nature of the contract and circumstances surrounding it." *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The "initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration, must always be that of implying a term of duration commensurate with the intentions of the parties . . . ." *Id.* at

1 727. Only when “the nature of the contract and the totality of  
2 the surrounding circumstances give no suggestion as to any  
3 ascertainable term . . . , the obligations under the contract shall  
4 be terminable at will by any party upon reasonable notice after  
5 such a reasonable time has elapsed.” *Id.* Further, it is  
6 immaterial that SPAVI had full knowledge of the contracts’  
7 terms. *See Jenni Rivera Enterprises, LLC v. Latin World*  
8 *Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783  
9 (2019). Nor is SPAVI’s belief about the legal significance of  
10 facts or belief that the parties’ agreements are legally binding  
11 or has a different legal effect from what it is judicially held to  
12 have. *See Little v. Amber Hotel Co.*, 202 Cal. App. 4th 280,  
13 302 (2011).

- 14 vii. Plaintiff’s Supporting Legal Position: The only contracts that  
15 have been identified as being “breached” are the unsigned  
16 licensee agreement and the AJVA. Neither document binds  
17 Cinco – indeed, that the AJVA constitutes an agreement to  
18 agree and not a contract has already been adjudicated and  
19 decided as law of the case. It is impossible to know what the  
20 specific contract is at issue here. To the extent any actual  
21 contract ever existed between Cinco and these parties, the  
22 only one that is possible is the Settlement Agreement and  
23 corresponding agreement selling PCJV equity to GKK  
24 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
25 a party to any other contract with any of the Counterclaim  
26 Defendants, that is the only one that could possibly be at  
27 issue, but Defendants refuse to acknowledge this.

iv. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

v. SPAVI and Cinco's Supporting Evidence: the absence of evidence is enough. There are no such contracts

b. Element No. 2: SPAVI knew of the contracts.

i. Disputed Status of Element 2: The parties dispute that this element is satisfied.

i. Nature of Dispute: Factual.

ii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iii. Plaintiff's Supporting Evidence: the absence of evidence is enough. There are no such contracts.

c. Element No. 3: SPAVI's conduct prevented performance or made performance more expensive or difficult.

i. Disputed Status of Element 3: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: PCJV USA Parties'

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Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties’ Tortious Conduct.

iv. SPAVI and Cinco’s Supporting Evidence: the absence of evidence is enough. There are no such contracts

d. Element No. 4: SPAVI either (a) intended to disrupt the performance of these contracts or (b) knew that disruption of performance was certain or substantially certain to occur.

i. Disputed Status of Element 4: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties’ Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties’ Tortious Conduct.

iv. SPAVI and Cinco’s Supporting Evidence: the absence of evidence is enough. There are no such contracts

e. Element No. 5: any one of the PCJV USA Parties were harmed.

i. Disputed Status of Element 5: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

1           iii. PCJV USA Parties' Supporting Evidence: ~~{insert}~~.the  
2           following category, which is defined above, captures the key  
3           phase and supporting evidence: SPAVI Parties' Tortious  
4           Conduct.

5           iv. SPAVI Parties' Supporting Evidence: the absence of evidence  
6           is enough. There are no such contracts.

7       f. Element No. 6: SPAVI's conduct was a substantial factor in causing  
8       any one of the PCJV USA Parties' harm.

9           i. Disputed Status of Element 6: The parties dispute that this  
10          element is satisfied.

11          ii. Nature of Dispute: Factual.

12          iii. PCJV USA Parties' Supporting Evidence: ~~{insert}~~.the  
13          following category, which is defined above, captures the key  
14          phase and supporting evidence: SPAVI Parties' Tortious  
15          Conduct.

16          iv. SPAVI Parties' Supporting Evidence: the absence of evidence  
17          is enough. There are no such contracts

18       **3) Cause of Action No. 4: Interference with Prospective Economic**  
19       **Relations.**

20       a. Element No. 1: any one of the PCJV USA Parties were in various  
21       economic relations, including with Cinco parties, franchisees,  
22       suppliers, and venders were in that probably would have resulted in an  
23       economic benefit to Defendants.

24           i. Disputed Status of Element 1: The parties dispute that this  
25           element is satisfied.

26           ii. Nature of Dispute: Legal and factual.

27           iii. PCJV USA Parties' Supporting Legal Position: The term for  
28

1 PCJV USA, LLC’s use of the U.S. Potato Corner trademarks  
2 “can be [i]mplied from the nature of the contract and  
3 circumstances surrounding it.” *See Consolidated Theatres,*  
4 *Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713,  
5 725 (1968). The “initial effort of the court, in construing  
6 contracts of continuing performance of forbearance which  
7 contain no express term of duration, must always be that of  
8 implying a term of duration commensurate with the intentions  
9 of the parties . . . .” *Id.* at 727. Only when “the nature of the  
10 contract and the totality of the surrounding circumstances give  
11 no suggestion as to any ascertainable term . . . , the obligations  
12 under the contract shall be terminable at will by any party  
13 upon reasonable notice after such a reasonable time has  
14 elapsed.” *Id.* Further, it is immaterial that SPAVI had full  
15 knowledge of the contracts’ terms. *See Jenni Rivera*  
16 *Enterprises, LLC v. Latin World Entertainment Holdings, Inc.*,  
17 36 Cal. App. 5th 766, 783 (2019). Nor is SPAVI’s belief about  
18 the legal significance of facts or belief that the parties’  
19 agreements are legally binding or has a different legal effect  
20 from what it is judicially held to have. *See Little v. Amber*  
21 *Hotel Co.*, 202 Cal. App. 4th 280, 302 (2011).

22 iv. Plaintiff’s Supporting Legal Position: the only relationships  
23 SPAVI knew about were with franchisees and certain vendors.  
24 the specific relationships at issue here have never been  
25 disclosed.

26 v. PCJV USA Parties’ Supporting Evidence: the following  
27 categories, which are defined above, capture the key phases  
28



and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

vi. SPAVI's Supporting Evidence: testimony of executives.

b. Element No. 2: SPAVI knew of the relationships.

i. Disputed Status of Element 2: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI's Supporting Evidence: testimony of executives

c. Element No. 3: SPAVI engaged in conduct to destroy the value of any one of the PCJV USA Parties' relationships by usurping the benefits of those relationships for SPAVI's benefit.

i. Disputed Status of Element 3: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI's Supporting Evidence: Testimony of Tan and

Concepcion and Victor and Shaikh and Hussein will all support SPAVI here.

d. Element No. 4: by engaging in this conduct, SPAVI either (a) intended to disrupt the relationships or (b) knew that disruption of the relationships was certain or substantially certain to occur.

i. Disputed Status of Element 4: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI's Supporting Evidence: Tan and Concepcion and Victor and Shaikh and Hussein will all support SPAVI here.

e. Element No. 5: those relationships were disrupted.

i. Disputed Status of Element 5: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.

iv. SPAVI Parties' Supporting Evidence: it is unknown what relationships were disrupted.

f. Element No. 6: any one of the PCJV USA Parties were harmed.

i. Disputed Status of Element 6: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI Parties' Supporting Evidence: no proof of this has ever been established, particularly harm caused by any of the responding parties.

g. Element No. 7: SPAVI's conduct was a substantial factor in causing any one of the PCJV USA Parties' harm.

i. Disputed Status of Element 7: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI Parties' Supporting Evidence: no proof of this has ever been established, particularly harm caused by any of the responding parties.

**4) Cause of Action No. 5: Negligent Interference with Prospective Economic Advantage.**

a. Element No. 1: any one of the PCJV USA Parties were in various economic relations, including with Cinco parties, franchisees,

1 suppliers, and venders that probably would have resulted in a future  
2 economic benefit to any one of the PCJV USA Parties.

3 i. Disputed Status of Element 1: The parties dispute that this  
4 element is satisfied.

5 ii. Nature of Dispute: Legal and factual.

6 iii. PCJV USA Parties' Supporting Legal Position: The term for  
7 PCJV USA, LLC's use of the U.S. Potato Corner trademarks  
8 "can be [i]mplied from the nature of the contract and  
9 circumstances surrounding it." *See Consolidated Theatres,*  
10 *Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713,  
11 725 (1968). The "initial effort of the court, in construing  
12 contracts of continuing performance of forbearance which  
13 contain no express term of duration, must always be that of  
14 implying a term of duration commensurate with the intentions  
15 of the parties . . . ." *Id.* at 727. Only when "the nature of the  
16 contract and the totality of the surrounding circumstances give  
17 no suggestion as to any ascertainable term . . . , the obligations  
18 under the contract shall be terminable at will by any party  
19 upon reasonable notice after such a reasonable time has  
20 elapsed." *Id.* Further, it is immaterial that SPAVI had full  
21 knowledge of the contracts' terms. *See Jenni Rivera*  
22 *Enterprises, LLC v. Latin World Entertainment Holdings, Inc.*,  
23 36 Cal. App. 5th 766, 783 (2019). Nor is SPAVI's belief about  
24 the legal significance of facts or belief that the parties'  
25 agreements are legally binding or has a different legal effect  
26 from what it is judicially held to have. *See Little v. Amber*  
27 *Hotel Co.*, 202 Cal. App. 4th 280, 302 (2011).

vii. Plaintiff's Supporting Legal Position: the only relationships SPAVI knew about were with franchisees and certain vendors. the specific relationships at issue here have never been disclosed.

iv. PCJV USA Parties' Supporting Evidence: documents and testimony including and related to prospective supplier economic relationships and franchisee relations. the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.

v. SPAVI's Supporting Evidence: testimony of executives.

b. Element No. 2: SPAVI knew or should have known of these relationships.

i. Disputed Status of Element 2: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI Parties' Supporting Evidence: testimony of executives

c. Element No. 3: SPAVI knew or should have known that these

relationships would be disrupted if it failed to act with reasonable care.

- i. Disputed Status of Element 3: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual.
- iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
- iv. SPAVI's Supporting Evidence: Testimony of Tan and Concepcion and Victor and Shaikh and Hussein will all support SPAVI here

d. Element No. 4: SPAVI failed to act with reasonable care.

- i. Disputed Status of Element 4: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual.
- iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
- iv. SPAVI's Supporting Evidence: Tan and Concepcion and Victor and Shaikh and Hussein will all support SPAVI here

e. Element No. 5: SPAVI engaged in wrongful conduct through engaging in conduct to destroy the value of any one of the PCJV USA Parties' relationships by usurping the benefits of those relationships for SPAVI's benefit.

- i. Disputed Status of Element 5: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual.
- iii. PCJV USA Parties' Supporting Evidence: the following

categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties’ Tortious Conduct.

- iv. SPAVI Parties’ Supporting Evidence: Tan and Concepcion and Victor and Shaikh and Hussein will all support SPAVI here

f. Element No. 6: the relationships were disrupted.

- i. Disputed Status of Element 6: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual.
- iii. PCJV USA Parties’ Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties’ Tortious Conduct.
- iv. SPAVI Parties’ Supporting Evidence: SPAVI is unaware of what relationships were harmed.

g. Element No. 7: any one of the PCJV USA Parties were harmed.

- i. Disputed Status of Element 7: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual.
- iii. PCJV USA Parties’ Supporting Evidence: the following category, which is defined above, captures the key phase and

supporting evidence: SPAVI Parties' Tortious Conduct.

- i. SPAVI Parties' Supporting Evidence: no proof of this has ever been established, particularly harm caused by any of the responding parties

h. Element No. 8: SPAVI's wrongful conduct was a substantial factor in causing Defendants' harm.

- i. Disputed Status of Element 8: The parties dispute that this element is satisfied.

- ii. Nature of Dispute: Factual.

- iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

- iv. SPAVI's Supporting Evidence: no proof of this has ever been established, particularly harm caused by any of the responding parties.

##### **5) Cause of Action No. 6: Aiding and Abetting Torts.**

a. Element No. 1: SPAVI knew that a breach of a fiduciary duty, breach of the implied covenant of good faith and fair dealing, fraud, or conversion was going to be committed by Cinco Corporation, its affiliates, or its agents against any one of the PCJV USA Parties.

- i. Disputed Status of Element 1: The parties dispute that this element is satisfied.

- ii. Nature of Dispute: Factual.

- iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing



Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties’ Tortious Conduct

iv. SPAVI’s Supporting Evidence: no torts have occurred so nothing could be aided or abetted.

b. Element No. 2: SPAVI gave substantial assistance or encouragement to Cinco Corporation, its affiliates, or its agents.

v. Disputed Status of Element 2: The parties dispute that this element is satisfied.

vi. Nature of Dispute: Factual.

vii. PCJV USA Parties’ Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties’ Tortious Conduct.

viii. SPAVI’s Supporting Evidence: no torts have occurred so nothing could be aided or abetted.

c. Element No. 3: Cinco Corporation’s, its affiliates, or its agents’ conduct was a substantial factor in causing harm to any one of the PCJV USA Parties.

ix. Disputed Status of Element 3: The parties dispute that this element is satisfied.

x. Nature of Dispute: Factual.

xi. PCJV USA Parties’ Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties’ Tortious Conduct.

- xii. SPAVI's Supporting Evidence: no torts have occurred so nothing could be aided or abetted.

**6) Cause of Action No. 7: First Count of Breach of Fiduciary Duty.**

- a. Element No. 1: either Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, was a joint venture partner of PCJV.
- i. Disputed Status of Element 1: The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: Factual.
  - ~~iii. PCJV USA Parties' Supporting Evidence: [insert]~~
  - iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.
  - iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability
- b. Element No. 2: Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, acted on PCJV's behalf for purposes of providing PCJV with an exclusive right to use the Potato Corner trademark in the United States.

- i. Disputed Status of Element 2: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual
- iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct
- iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

c. Element No. 3: Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, failed to act as a reasonably careful partner would have acted under the same or similar circumstances.

- i. Disputed Status of Element 3: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual
- iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of

the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct

iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

d. Element No. 4: any one of the PCJV USA Parties were harmed.

i. Disputed Status of Element 4: The parties dispute that this element is satisfied.

ii. Nature of Dispute: factual

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

e. Element No. 5: the conduct of Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, was a substantial factor in causing any one of the PCJV USA Parties' harm.

i. Disputed Status of Element 5: The parties dispute that this element is satisfied.

ii. Nature of Dispute: factual

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct

- iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

**7) Cause of Action No. 7: Second Count of Breach of Fiduciary Duty.**

- a. Element No. 1: Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, was a joint venture partner of PCJV.

- i. Disputed Status of Element 1: The parties dispute that this element is satisfied.

- ii. Nature of Dispute: factual

~~iii. PCJV USA Parties' Supporting Evidence: [insert]~~

iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

- iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

- b. Element No. 2: Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, knowingly acted against interests of PCJV and PCJV's other joint venture partners in connection with providing PCJV with an exclusive right to use the Potato Corner trademark in the

United States.

- i. Disputed Status of Element 2: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual
- iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct
- iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

c. Element No. 3: any one of the PCJV USA Parties did not give informed consent to the conduct of Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest.

- i. Disputed Status of Element 3: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual
- iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing

1 Ratification (2011–2012), Formalization and Modification of  
2 the Joint Venture (2012), LA Group Partnership Agreement  
3 and Evolving Business Dynamics and Terms (2013–2018),  
4 Dispute, Litigation, and State Court Proceedings (2018 and  
5 Beyond), Ongoing Annual Ratification and Regulatory  
6 Compliance, and SPAVI Parties' Tortious Conduct.

7 iv. SPAVI and Cinco's Supporting Evidence: the absence of  
8 evidence of a duty will suffice. Also, no evidence that SPAVI  
9 is a successor in interest or took on this liability

10 d. Element No. 4: any one of the PCJV USA Parties were harmed,

11 i. Disputed Status of Element 4: The parties dispute that this  
12 element is satisfied.

13 ii. Nature of Dispute: Factual.

14 iii. PCJV USA Parties' Supporting Evidence: the following  
15 category, which is defined above, captures the key phase and  
16 supporting evidence: SPAVI Parties' Tortious Conduct.

17 iv. SPAVI and Cinco's Supporting Evidence: the absence of  
18 evidence of a duty will suffice. Also, no evidence that SPAVI  
19 is a successor in interest or took on this liability

20 e. Element No. 5: the conduct of Cinco Corporation or SPAVI, as Cinco  
21 Corporation's successor-in-interest, was a substantial factor in causing  
22 any one of the PCJV USA Parties' harm.

23 i. Disputed Status of Element 5: The parties dispute that this  
24 element is satisfied.

25 ii. Nature of Dispute: factual

26 iii. PCJV USA Parties' Supporting Evidence: the following  
27 category, which is defined above, captures the key phase and  
28

supporting evidence: SPAVI Parties' Tortious Conduct

- iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

**8) Cause of Action No. 78: Breach of Contract.**

- a. Element No. 1: there is a contract between PCJV and Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest.
- i. Disputed Status of Element 1: The parties dispute this element is satisfied.
- ii. Nature of Dispute: factual and legal
- iii. PCJV USA Parties' Position Statement: The term for PCJV USA, LLC's use of the U.S. Potato Corner trademarks "can be [i]mplied from the nature of the contract and circumstances surrounding it." *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The "initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration, must always be that of implying a term of duration commensurate with the intentions of the parties . . . ." *Id.* at 727. Only when "the nature of the contract and the totality of the surrounding circumstances give no suggestion as to any ascertainable term . . . , the obligations under the contract shall be terminable at will by any party upon reasonable notice after such a reasonable time has elapsed." *Id.* Further, it is immaterial that SPAVI had full knowledge of the contracts' terms. *See Jenni Rivera Enterprises, LLC v. Latin World*



1 *Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783  
2 (2019). Nor is SPAVI's belief about the legal significance of  
3 facts or belief that the parties' agreements are legally binding  
4 or has a different legal effect from what it is judicially held to  
5 have. *See Little v. Amber Hotel Co.*, 202 Cal. App. 4th 280,  
6 302 (2011)

7 iv. Plaintiff's Position Statement: as drafted it is impossible to  
8 know what the specific contract is that is at issue here. It has  
9 never been disclosed, and still undisclosed. Rather than  
10 jettison the claim or actually identify the contract, instead,  
11 Defendants' solution is to fudge with obtuse language in the  
12 jury instructions, designed to confuse everyone, including the  
13 jury: "there was a contract between any one of the PCJV  
14 Plaintiffs and any one of the Cinco parties." Indeed, the only  
15 contract that Cinco has been a party to with any of these  
16 Counterclaimants is the Settlement Agreement of the Prior  
17 Governance Action. There is no other written agreement  
18 between PCJV and Cinco, or between any other  
19 Counterclaimant and Cinco. It is possible that  
20 Counterclaimants are seeking to allege that Cinco is an alter  
21 ego of Potato Corner International or others, however,  
22 PCJV and the other counterclaimants already alleged this --  
23 alter ego status of Cinco -- and after a negotiated  
24 settlement, dismissed this claim with prejudice. They may  
25 not raise it now. *See, e.g., Torrey Pines Bank v. Superior Ct.*,  
26 216 Cal. App. 3d 813, 820 (Ct. App. 1989) (holding that "a  
27 dismissal with prejudice is the maiden name for a common

1 law retraxit,” and “[a] retraxit is equivalent to a judgment on  
2 the merits and as such bars further litigation on the same  
3 subject matter between the parties.”); *Datta v. Staab*, 173  
4 Cal. App. 2d 613, 620—21 (1959) (“The effect of a dismissal  
5 with prejudice is quite different, however, when it is  
6 executed and filed in return for a consideration moving from  
7 the defendant. Such a dismissal operates as a complete bar to  
8 any future action and has the same legal effect as a common  
9 law petraxit.”).

10 v. Defendants’ Supporting Evidence: the following categories,  
11 which are defined above, capture the key phases and  
12 supporting evidence: Superseding Joint Venture (2008–  
13 2010), Alternative Licensing Arrangements and Ongoing  
14 Ratification (2011–2012), Formalization and Modification of  
15 the Joint Venture (2012), LA Group Partnership Agreement  
16 and Evolving Business Dynamics and Terms (2013–2018),  
17 Dispute, Litigation, and State Court Proceedings (2018 and  
18 Beyond), and Ongoing Annual Ratification and Regulatory  
19 Compliance.

20 vi. SPAVI Parties’ Supporting Evidence: Each of the  
21 agreements included in the trial exhibits and testimony of  
22 Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which  
23 will establish that none of the Counterclaimants – PCJV,  
24 PCIT, LA Group LLC, GK Capital, NKM, or Koren have  
25 any contract to which Cinco has privity; the settlement  
26 agreement (Trial Exhibit 1172) and evidence of the  
27 dismissals with prejudice, as well as the pleadings in the

1 prior case establishing what has been dismissed, and subject  
2 to retransit.

3 b. Element No. 2: PCJV USA Parties did all or substantially all of the  
4 things required under the contract, or were excused from so  
5 performing:

6 i. Disputed Status of Element 2: The parties dispute this  
7 element is satisfied.

8 ii. Nature of Dispute: factual and legal.

9 iii. PCJV USA Parties' Position Statement: Plaintiff's position  
10 statement does not address a legal issue concerning this  
11 element. To the extent Plaintiff's position statement  
12 addresses element 1, PCJV USA Parties incorporate their  
13 respective response here

14 iv. Plaintiff's Position Statement: as drafted it is impossible to  
15 know what the specific contract is at issue here. It has never  
16 been disclosed, and still undisclosed. So, when this element  
17 in the instructions says, "the contract," whereas the prior  
18 element refers to some unidentified contract, as a matter of  
19 law, yes, this element is disputed. To the extent any actual  
20 contract ever existed between Cinco and these parties, the  
21 only one that is possible is the Settlement Agreement and  
22 corresponding agreement selling PCJV equity to GKK  
23 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
24 a party to any other contract with any of the Counterclaim  
25 Defendants, that is the only one that could possibly be at  
26 issue, but Defendants refuse to acknowledge this. It is  
27 possible that Counterclaimants are seeking to allege that

Cinco is an alter ego of Potato Corner International or others, however, PCJV and the other counterclaimants already alleged this -- alter ego status of Cinco -- and after a negotiated settlement, dismissed this claim with prejudice. They may not raise it now. *See, e.g., Torrey Pines Bank v. Superior Ct.*, 216 Cal. App. 3d 813, 820 (Ct. App. 1989) (holding that “a dismissal with prejudice is the maiden name for a common law retraxit,” and “[a] retraxit is equivalent to a judgment on the merits and as such bars further litigation on the same subject matter between the parties.”); *Datta v. Staab*, 173 Cal. App. 2d 613, 620—21 (1959) (“The effect of a dismissal with prejudice is quite different, however, when it is executed and filed in return for a consideration moving from the defendant. Such a dismissal operates as a complete bar to any future action and has the same legal effect as a common law retraxit.”) (internal

v. PCJV USA Parties’ Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

vi. SPAVI Parties’ Supporting Evidence: Each of the

1 agreements included in the trial exhibits and testimony of  
2 Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which  
3 will establish that none of the Counterclaimants – PCJV,  
4 PCIT, LA Group LLC, GK Capital, NKM, or Koren have  
5 any contract to which Cinco has privity; the settlement  
6 agreement (Trial Exhibit 1172) and evidence of the  
7 dismissals with prejudice, as well as the pleadings in the  
8 prior case establishing what has been dismissed, and subject  
9 to retraxit..

- 10 c. Element No. 3: Cinco Corporation or SPAVI, as Cinco  
11 Corporation's successor-in-interest, breached the contract
- 12 i. Disputed Status of Element 3: The parties dispute this  
13 element is satisfied.
  - 14 ii. Nature of Dispute: factual and legal.
  - 15 iii. PCJV USA Parties' Position Statement: SPAVI intended to  
16 cause the breach of the above listed contracts by: (1)  
17 allegedly acquiring IP rights from Cinco (which SPAVI  
18 claims include US IP rights), without LA  
19 Group's/Koren's/PCJV's prior written consent in violation of  
20 the JVA/AJVA/LLC Agreement; (2) failing to allegedly  
21 acquire the associated obligations and burdens under those  
22 agreements to, for example, acknowledge our use and  
23 termination rights, make best efforts to cooperate for the  
24 success of PCJV, to perform further acts (such as execute  
25 and deliver all required documents), if necessary, to provide  
26 us use rights, or to, at minimum, acknowledge that PCJV  
27 maintains a 50-year license or at least may continue to use

for as long as necessary under the franchise agreements it was authorized to sign with franchisees in violation of the JVA/AJVA/LLC Agreement/license agreements/MSA (and associated written, oral, implied-in-fact agreements/modifications, such as meeting minutes, written communications of the PCJV members/managers, FDDs); (3) refusing to acknowledge PCJV's right to reverse engineer the powders/spices in violation of the PCJV board meeting minutes; (4) refusing to acknowledge PCJV's affiliated Koren stores' right not to pay royalties in accordance with the JVA/AJVA/LLC Agreement; (5) refusing to acknowledge LA Group's and Cinco Group/PCI Group's mutual waiver of royalties as to all other initial/franchise fees or other royalty income actually collected or to be collected by PCJV in accordance with the JVA/AJVA/LLC Agreement/FDDs; (6) refusing to honor the settlement struck with Cinco whereby Koren/GK acquired all interests and attached interests (despite representing that it would); and (7) causing certain PCJV franchisees to breach their franchise agreements and associate themselves with SPAVI.

- iv. Plaintiff's Position Statement: The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific contract is at issue here. To the extent any actual contract

1 ever existed between Cinco and these parties, the only one  
2 that is possible is the Settlement Agreement and  
3 corresponding agreement selling PCJV equity to GKK  
4 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
5 a party to any other contract with any of the Counterclaim  
6 Defendants, that is the only one that could possibly be at  
7 issue, but Defendants refuse to acknowledge this.

8 v. PCJV USA Parties' Supporting Evidence: the following  
9 categories, which are defined above, capture the key phases  
10 and supporting evidence: Superseding Joint Venture (2008–  
11 2010), Alternative Licensing Arrangements and Ongoing  
12 Ratification (2011–2012), Formalization and Modification of  
13 the Joint Venture (2012), LA Group Partnership Agreement  
14 and Evolving Business Dynamics and Terms (2013–2018),  
15 Dispute, Litigation, and State Court Proceedings (2018 and  
16 Beyond), Ongoing Annual Ratification and Regulatory  
17 Compliance, and SPAVI Parties' Tortious Conduct.

18 vi. SPAVI Parties' Supporting Evidence: The absence of  
19 evidence that Cinco was a party to, or breached, any  
20 contract with any of the Counterclaimants is the supporting  
21 evidence.

22 d. Element No. 4: PCJV USA Parties were harmed.

23 i. Disputed Status of Element 4: The parties dispute this  
24 element is satisfied.

25 ii. Nature of Dispute: factual and legal.

26 iii. Defendants' Position Statement: Plaintiff's position  
27 statement does not address a legal issue concerning this

1 element. To the extent Plaintiff's position statement  
2 addresses element 1, PCJV USA Parties incorporate their  
3 respective response here.

4 iv. Plaintiff's Position Statement: Cinco breached no contract.

5 The only contracts that have been identified as being  
6 "breached" are the unsigned licensee agreement and the  
7 AJVA. Neither document binds Cinco – indeed, that the  
8 AJVA constitutes an agreement to agree and not a contract  
9 has already been adjudicated and decided as law of the case.  
10 It is impossible to know what the specific contract is at issue  
11 here. To the extent any actual contract ever existed between  
12 Cinco and these parties, the only one that is possible is the  
13 Settlement Agreement and corresponding agreement selling  
14 PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because  
15 Cinco has never been a party to any other contract with any  
16 of the Counterclaim Defendants, that is the only one that  
17 could possibly be at issue, but Defendants refuse to  
18 acknowledge this.

19 v. Defendants' Supporting Evidence: the following category,  
20 which is defined above, captures the key phase and  
21 supporting evidence: SPAVI Parties' Tortious Conduct.

22 vi. SPAVI Parties' Supporting Evidence: The absence of  
23 evidence that Cinco was a party to, or breached, any  
24 contract with any of the Counterclaimants is the supporting  
25 evidence, as there is no way any of the Counterclaimants  
26 could have been harmed.

27 **9) Cause of Action No. 9: Breach of Covenant of Good Faith and Fair**



**Dealing.**

e. Element No. 1: there is a contract between a Counterclaimant and Cinco Corporation / that SPAVI is a successor in interest to a contract with Cinco.

- i. Disputed Status of Element 1: The parties dispute this element is satisfied.
- ii. Nature of Dispute: factual and legal
- iii. PCJV USA Parties' Position Statement: The term for PCJV USA, LLC's use of the U.S. Potato Corner trademarks "can be [i]mplied from the nature of the contract and circumstances surrounding it." *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The "initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration, must always be that of implying a term of duration commensurate with the intentions of the parties . . . ." *Id.* at 727. Only when "the nature of the contract and the totality of the surrounding circumstances give no suggestion as to any ascertainable term . . . , the obligations under the contract shall be terminable at will by any party upon reasonable notice after such a reasonable time has elapsed." *Id.* Further, it is immaterial that SPAVI had full knowledge of the contracts' terms. *See Jenni Rivera Enterprises, LLC v. Latin World Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783 (2019). Nor is SPAVI's belief about the legal significance of facts or belief that the parties' agreements are legally binding

1 or has a different legal effect from what it is judicially held to  
2 have. *See Little v. Amber Hotel Co.*, 202 Cal. App. 4th 280,  
3 302 (2011).

4 iv. Plaintiff's Position Statement: Moreover, and again, as  
5 drafted it is impossible to know what the specific contract is  
6 that is at issue here. It has never been disclosed, and still  
7 undisclosed. Rather than jettison the claim or actually  
8 identify the contract, instead, Defendants' solution is to  
9 fudge with obtuse language in the jury instructions, designed  
10 to confuse everyone, including the jury: "there was a contract  
11 between any one of the PCJV Plaintiffs and any one of the  
12 Cinco parties." Indeed, the only contract that Cinco has been  
13 a party to with any of these Counterclaimants is the  
14 Settlement Agreement of the Prior Governance Action. There  
15 is no other written agreement between PCJV and Cinco, or  
16 between any other Counterclaimant and Cinco. It is possible  
17 that Counterclaimants are seeking to allege that Cinco is an  
18 alter ego of Potato Corner International or others, however,  
19 PCJV and the other counterclaimants already alleged this --  
20 alter ego status of Cinco -- and after a negotiated  
21 settlement, dismissed this claim with prejudice. They may  
22 not raise it now. *See, e.g., Torrey Pines Bank v. Superior Ct.*,  
23 216 Cal. App. 3d 813, 820 (Ct. App. 1989) (holding that "a  
24 dismissal with prejudice is the maiden name for a common  
25 law retraxit," and "[a] retraxit is equivalent to a judgment on  
26 the merits and as such bars further litigation on the same  
27 subject matter between the parties."); *Datta v. Staab*, 173

Cal. App. 2d 613, 620—21 (1959) (“The effect of a dismissal with prejudice is quite different, however, when it is executed and filed in return for a consideration moving from the defendant. Such a dismissal operates as a complete bar to any future action and has the same legal effect as a common law *petrahit*.”). Second, as for SPAVI, it purchased intellectual property, and did not assume any contracts binding Cinco. Thus, the claim that SPAVI is bound to good faith and fair dealing as a “successor in interest has no basis” and can be resolved a matter of law,, given that this simply requires interpretation of contracts binding Cinco (of which there are no one) to which SPAVI assumed (also, null set). Put simply – S{PAVI is not a successor in interest to any contract of Cinco, and by purchasing the intellectual property of Cinco, it was only bound to those contracts involving the use and licensing of the brand – none of which are at issue in this case.

v. PCJV USA Parties’ Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

vi. SPAVI Parties' Supporting Evidence: Each of the agreements included in the trial exhibits and testimony of Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which will establish that none of the Counterclaimants – PCJV, PCIT, LA Group LLC, GK Capital, NKM, or Koren have any contract to which Cinco has privity; the settlement agreement (Trial Exhibit 1172) and evidence of the dismissals with prejudice, as well as the pleadings in the prior case establishing what has been dismissed, and subject to retraxit.

f. Element No. 2: The Counterclaimant that is a party to the contract did all or substantially all of the things required under the contract, or were excused from so performing:

i. Disputed Status of Element 2: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. PCJV USA Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.

iv. Plaintiff's Position Statement: as drafted it is impossible to know what the specific contract is at issue here. It has never been disclosed, and still undisclosed. So, when this element in the instructions says, "the contract," whereas the prior element refers to some unidentified contract, as a matter of law, yes, this element is disputed. To the extent any actual

1 contract ever existed between Cinco and these parties, the  
2 only one that is possible is the Settlement Agreement and  
3 corresponding agreement selling PCJV equity to GKK  
4 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
5 a party to any other contract with any of the Counterclaim  
6 Defendants, that is the only one that could possibly be at  
7 issue, but Defendants refuse to acknowledge this. It is  
8 possible that Counterclaimants are seeking to allege that  
9 Cinco is an alter ego of Potato Corner International or  
10 others, however, PCJV and the other counterclaimants  
11 already alleged this -- alter ego status of Cinco -- and after  
12 a negotiated settlement, dismissed this claim with prejudice.  
13 They may not raise it now. *See, e.g., Torrey Pines Bank v.*  
14 *Superior Ct.*, 216 Cal. App. 3d 813, 820 (Ct. App. 1989)  
15 (holding that “a dismissal with prejudice is the maiden name  
16 for a common law retraxit,” and “[a] retraxit is equivalent to  
17 a judgment on the merits and as such bars further litigation  
18 on the same subject matter between the parties.”); *Datta v.*  
19 *Staab*, 173 Cal. App. 2d 613, 620—21 (1959) (“The effect of  
20 a dismissal with prejudice is quite different, however, when  
21 it is executed and filed in return for a consideration moving  
22 from the defendant. Such a dismissal operates as a complete  
23 bar to any future action and has the same legal effect as a  
24 common law petraxit.”). Second, as for SPAVI, it purchased  
25 intellectual property, and did not assume any contracts  
26 binding Cinco. Thus, the claim that SPAVI is bound to good  
27 faith and fair dealing as a “successor in interest has no basis”  
28

and can be resolved a matter of law,, given that this simply requires interpretation of contracts binding Cinco (of which there are no one) to which SPAVI assumed (also, null set). Put simply – S{PAVI is not a successor in interest to any contract of Cinco, and by purchasing the intellectual property of Cinco, it was only bound to those contracts involving the use and licensing of the brand – none of which are at issue in this case.

- v. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.
- vi. SPAVI Parties' Supporting Evidence: Each of the agreements included in the trial exhibits and testimony of Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which will establish that none of the Counterclaimants – PCJV, PCIT, LA Group LLC, GK Capital, NKM, or Koren have any contract to which Cinco has privity; the settlement agreement (Trial Exhibit 1172) and evidence of the dismissals with prejudice, as well as the pleadings in the prior case establishing what has been dismissed, and subject

to retraxit.

g. Element No. 3: Cinco or SPAVI engaged in conduct that breached the duty of good faith and fair dealing.

i. Disputed Status of Element 3: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. PCJV USA Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.

iv. Plaintiff's Position Statement: The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific contract is at issue here. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this. In the absence of a contract binding Cinco, it is possible that Counterclaimants are seeking to allege that Cinco is an alter

ego of Potato Corner International or others, however, PCJV and the other counterclaimants already alleged this -- alter ego status of Cinco -- and after a negotiated settlement, dismissed this claim with prejudice. They may not raise it now. *See, e.g., Torrey Pines Bank v. Superior Ct.*, 216 Cal. App. 3d 813, 820 (Ct. App. 1989) (holding that “a dismissal with prejudice is the maiden name for a common law retraxit,” and “[a] retraxit is equivalent to a judgment on the merits and as such bars further litigation on the same subject matter between the parties.”); *Datta v. Staab*, 173 Cal. App. 2d 613, 620—21 (1959) (“The effect of a dismissal with prejudice is quite different, however, when it is executed and filed in return for a consideration moving from the defendant. Such a dismissal operates as a complete bar to any future action and has the same legal effect as a common law petraxit.”). Second, as for SPAVI, it purchased intellectual property, and did not assume any contracts binding Cinco. Thus, the claim that SPAVI is bound to good faith and fair dealing as a “successor in interest has no basis” and can be resolved a matter of law,, given that this simply requires interpretation of contracts binding Cinco (of which there are no one) to which SPAVI assumed (also, null set). Put simply – S{PAVI is not a successor in interest to any contract of Cinco, and by purchasing the intellectual property of Cinco, it was only bound to those contracts involving the use and licensing of the brand– none of which are at issue in this case.



- 1 v. PCJV USA Parties' Supporting Evidence: the following  
2 category, which is defined above, captures the key phase and  
3 supporting evidence: SPAVI Parties' Tortious Conduct.  
4 vi. SPAVI Parties' Supporting Evidence: The absence of  
5 evidence that Cinco was a party to, or breached, any  
6 contract with any of the Counterclaimants is the supporting  
7 evidence. Plaintiff's Position Statement: In addition to the  
8 absence of any contract binding Cinco or SPAVI – thus  
9 there could be no corresponding breach of the covenant of  
10 good faith and fair dealing – the evidence of Koren's  
11 behavior during the license negotiations, particularly with  
12 SPAVI, lead to the conclusion that it was he that caused the  
13 negotiations to fail, not anyone else. Testimony of SPAVI  
14 (Gregorio and Tan) as well as their correspondence with  
15 Koren (Trial Exhibits 20-31) will establish this. The only  
16 contracts that have been identified as being "breached" are  
17 the unsigned licensee agreement and the AJVA. Neither  
18 document binds Cinco – indeed, that the AJVA constitutes an  
19 agreement to agree and not a contract has already been  
20 adjudicated and decided as law of the case. It is impossible to  
21 know what the specific contract is at issue here. To the extent  
22 any actual contract ever existed between Cinco and these  
23 parties, the only one that is possible is the Settlement  
24 Agreement and corresponding agreement selling PCJV  
25 equity to GKK Capital. (Trial Exhibit 1176.) I acknowledge  
26 has never been a party to any other contract with any of the  
27 Counterclaim Defendants, which is the only one that could

possibly be at issue, but Defendants refuse to acknowledge this.

h. Element No. 4: Counterclaimants were harmed.

i. Disputed Status of Element 4: The parties dispute this element is satisfied.

ii. Nature of Dispute: legal.

iii. PCJV Usa Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.

iv. Plaintiff's Position Statement: Cinco breached no contract. The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific contract is at issue here. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

i. **Cause of Action No. 11: Quantum Meruit.**

i. Element No. 1: any of the SPAVI Parties requested, by words or conduct, that any one of the PCJV USA Parties perform services for the benefit of any of the SPAVI Parties.

i. Disputed Status of Element 1: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual

iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

iv. SPAVI and Cinco's Supporting Evidence: the lack of evidence of this will suffice. Testimony of Gregorio will confirm as will testimony of Koren.

ii. Element No. 2: any one of the PCJV USA Parties performed the services as requested.

i. Disputed Status of Element 2: The parties dispute that this element is satisfied.

ii. Nature of Dispute: factual

iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key

phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.

iv. SPAVI and Cinco's Supporting Evidence: the lack of evidence of this will suffice. Testimony of Gregorio will confirm as will testimony of Koren.

iii. Element No. 3: the requesting SPAVI Party/Parties has not paid any one of the PCJV USA Parties for the services.

i. Disputed Status of Element 3: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI and Cinco's Supporting Evidence: the lack of evidence of this will suffice. Testimony of Gregorio will confirm as will testimony of Koren.

iv. Element No. 4: the reasonable value of the services that were provided.

i. Disputed Status of Element 4: The parties dispute that

1 this element is satisfied.

2 ii. Nature of Dispute: Factual

3 iii. PCJV USA Parties' Supporting Evidence: documents and  
4 testimony including and related to the following: (1)  
5 PCJV USA Parties' financial records; (2) PCJV USA  
6 Parties' historical growth; and (3) PCJV USA Parties'  
7 franchisee agreements and communications.

8 iv. SPAVI and Cinco's Supporting Evidence: there is no  
9 evidence of this.

10  
11 **III. SPAVI Parties' Affirmative Defenses**

12 1) Affirmative Defense No. 1: Laches (asserted by Counter Defendant and  
13 Third Party Defendants as to all claims alleged against them)

14 a. Element No. 1: A Delay in asserting a claim.

15 i. This element is disputed

16 ii. Nature of Dispute: ~~Legal and~~ Factual

17 iii. Plaintiff's Position Statement: Laches is an affirmative  
18 defense.

19 iv. Defendants' Position Statement: Laches is an equitable  
20 claim to be tried by the Court. *Ultimax Cement Mfg.*  
21 *Corp. v. CTS Cement Mfg. Corp.*, 856 F.Supp. 2d 1136,  
22 1151 (2012).

23 v. Plaintiff's Supporting Evidence: Both the JVA and  
24 AJVA contain an agreement to agree on a Master License  
25 Agreement. However, there was never a written license  
26 agreement executed between Counterclaimants and  
27 Cinco. Counterclaimants entered into a negotiation

process with Cinco, prior to SPAVI's acquisition of the Potato Corner brand and all of the Potato Corner Intellectual Property from Cinco, for the terms of a license to use the Potato Corner Intellectual Property. These negotiations began before SPAVI purchased the rights to the Potato Corner IP. So, Counterclaimants have been aware of the lack of ownership rights in the Potato Corner Intellectual Property and the non-existence of a written agreement. Then, between December of 2021 through 2024, the months immediately preceding this action, SPAVI engaged in a good faith and exhaustive attempt to negotiate the terms of a written license with PCJV as well. Never once did Counterclaimants state that they had ownership rights to the Potato Corner Intellectual Property, and SPAVI relied on that representation because had one been expressed, that would have been a dispute as to the ownership rights to which SPAVI would have filed this lawsuit sooner. Additional evidence includes: Notarized Deeds signed by seller and buyer; USPTO filings including Registrations and Assignments; Testimony of Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's General Counsel), Tan (Director responsible for international franchising); and emails and correspondence during the negotiation of the terms of the license agreement.

vi. PCJV USA's Parties Supporting Evidence: SPAVI parties

1 have not articulated their defense beyond what is included  
2 in their Answers until 7am on August 12, 2025. *See* n. 1.  
3 As it is articulated in the Answers, PCJV Parties cannot  
4 determine the factual basis for the defense. As such, the  
5 out of an abundance of caution, PCJV Parties incorporate  
6 by reference all of the evidence cited in support of their  
7 causes of action

8 b. Element No. 2: acquiescence by Counterclaim Defendants or Third  
9 Party Defendants or their suffering of prejudice, which can include  
10 detrimental reliance on the status quo, loss of evidence, or other  
11 circumstances that make it inequitable to allow the claimants to  
12 assert their claim after the delay.

13 i. This element is disputes

14 ii. Nature of Dispute: Legal and factual

15 iii. Plaintiff's Position Statement: Laches is an affirmative  
16 defense.

17 iv. PCJV USA Parties' Position Statement: PCJV USA

18 Parties' Position Statement: Laches is an equitable claim  
19 to be tried by the Court. *Ultimax Cement Mfg. Corp. v.*  
20 *CTS Cement Mfg. Corp.*, 856 F.Supp. 2d 1136, 1151  
21 (2012). "A defendant must demonstrate three elements to  
22 successfully assert laches defense: (1) delay in asserting a  
23 right or claim; (2) the delay was not reasonable or  
24 excusable; and (3) prejudice to the party against whom  
25 laches is asserted." *Magic Kitchen LLC v. Good Things*  
26 *Internat., Ltd.*, 153 Cal. App. 4th 1144, 1157 (2007).  
27 SPAVI Parties' statement of what it needs to prove here

as an element to laches is incorrect

v. Plaintiff's Supporting Evidence: Both the JVA and AJVA contain an agreement to agree on a Master License Agreement. However, there was never a written license agreement executed between Counterclaimants and Cinco. Counterclaimants entered into a negotiation process with Cinco, prior to SPAVI's acquisition of the Potato Corner brand and all of the Potato Corner Intellectual Property from Cinco, for the terms of a license to use the Potato Corner Intellectual Property. These negotiations began in [DATE]. So, as of [DATE], Counterclaimants have been aware of the lack of ownership rights in the Potato Corner Intellectual Property and the non-existence of a written agreement. Then, between December of 2021 through 2024, the months immediately preceding this action, SPAVI engaged in a good faith and exhaustive attempt to negotiate the terms of a written license with PCJV as well. Never once did Counterclaimants state that they had ownership rights to the Potato Corner Intellectual Property, and SPAVI relied on that representation because had one been expressed, that would have been a dispute as to the ownership rights to which SPAVI would have filed this lawsuit sooner. Additional evidence includes: Notarized Deeds signed by seller and buyer; USPTO filings including Registrations and Assignments; Testimony of Gregorio (Plaintiff's CEO), Magsaysay



(Cinco's CEO), Koren, Ybanez (Plaintiff's General Counsel), Tan (Director responsible for international franchising); and emails and correspondence during the negotiation of the terms of the license agreement.

- vi. PCJV USA Parties' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action.

2) **Affirmative Defense No. 2:** Consent (asserted by Counterclaim

Defendant and Third Party Defendants as to all claims alleged against them)

- a. Element No. 1: One or more of the Counterclaimants or Third Party Plaintiffs consented to the acts about which they complain.

i. This element is disputed.

ii. Nature of Dispute: ~~Legal and~~ factual

iii. Plaintiff's Position Statement: The elements are taken from CACI 1721

~~iv. PCJV USA Parties' Position Statement: SPAVI Parties' appear to have combined an element of their laches affirmative defense. Otherwise, there is no legal support for SPAVI Parties' articulated element~~

- ~~v.~~ iv. Plaintiff's Supporting Evidence: Both the JVA and AJVA contain an agreement to agree on a Master License

1 Agreement. However, there was never a written license  
2 agreement executed between Counterclaimants and  
3 Cinco. Counterclaimants entered into a negotiation  
4 process with Cinco, prior to SPAVI's acquisition of the  
5 Potato Corner brand and all of the Potato Corner  
6 Intellectual Property from Cinco, for the terms of a  
7 license to use the Potato Corner Intellectual Property.  
8 These negotiations began in [DATE]. So, as of [DATE],  
9 Counterclaimants have been aware of the lack of  
10 ownership rights in the Potato Corner Intellectual  
11 Property and the non-existence of a written agreement.  
12 Then, between December of 2021 through 2024, the  
13 months immediately preceding this action, SPAVI  
14 engaged in a good faith and exhaustive attempt to  
15 negotiate the terms of a written license with PCJV as  
16 well. Never once did Counterclaimants state that they had  
17 ownership rights to the Potato Corner Intellectual  
18 Property, and SPAVI relied on that representation because  
19 had one been expressed, that would have been a dispute  
20 as to the ownership rights to which SPAVI would have  
21 filed this lawsuit sooner. Additional evidence includes:  
22 Notarized Deeds signed by seller and buyer; USPTO  
23 filings including Registrations and Assignments;  
24 Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
25 (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
26 Counsel), Tan (Director responsible for international  
27 franchising); and emails and correspondence during the

negotiation of the terms of the license agreement.

vi. PCJV USA Parties' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action.

3) **Affirmative Defense No. 3:** Estoppel (asserted by Counterclaim Defendant and Third Party Defendants as to all claims alleged against them)

a. Element No. 1: A representation or concealment of material facts;

i. This element is disputed

ii. Nature of Dispute: Legal and factual

iii. SPAVI and Cinco's Position Statement: Estoppel is an affirmative defense

iv. PCJV USA Parties Position: PCJV USA Parties' Position Statement: Equitable estoppel is an equitable claim to be tried by the Court. *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*, 856 F.Supp. 2d 1136, 1151 (2012).

v. Plaintiff's Supporting Evidence: Counterclaimants have no evidence of a written license to use SPAVI's Potato Corner Intellectual Property, and, as such, its rights (that it has sold to its franchisees) derive from what is, at best, a terminable at will, fully revocable license because Defendants were nonetheless operating Potato Corner

locations, as if a written license existed. See *Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018) (“[A]n implied license, like any other contract, is terminable at the will of either party if it is not for a specified term.”). After SPAVI’s acquisition of the Potato Corner brand, it became the licensor of the Potato Corner Intellectual Property. Between December of 2021 through 2024, the months immediately preceding this action, SPAVI engaged in a good faith and exhaustive attempt to negotiate the terms of a written license with PCJV. Defendant Guy Koren engaged and participated in this negotiation, but was unwilling to agree to any minimally commercially viable licensing terms. Never once did Counterclaimants state that they had ownership rights to the Potato Corner Intellectual Property, and SPAVI relied on that representation. Additional evidence includes: Testimony of Gregorio (Plaintiff’s CEO), Magsaysay (Cinco’s CEO), Koren, Ybanez (Plaintiff’s General Counsel), Tan (Director responsible for international franchising); and emails and correspondence during the negotiation of the terms of the license agreement.

- vi. PCJV USA Parties’ Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers. As it is articulated there, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties

incorporate by reference all of the evidence cited in support of their causes of action.

b. Element 2: Made with knowledge, actual or virtual, of the facts;

i. This element is disputed

ii. Nature of Dispute: Legal and factual

iii. Plaintiff's Position Statement: Estoppel is an affirmative defense

iv. PCJV USA Parties' Position Statement: Equitable estoppel is an equitable claim to be tried by the Court.

*Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*, 856 F.Supp. 2d 1136, 1151 (2012).

v. Plaintiff's Supporting Evidence: Plaintiff's Supporting Evidence: Counterclaimants have no evidence of a written license to use SPAVI's Potato Corner Intellectual Property, and, as such, its rights (that it has sold to its franchisees) derive from what is, at best, a terminable at will, fully revocable license because Defendants were nonetheless operating Potato Corner locations, as if a written license existed. *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018) ("[A]n implied license, like any other contract, is terminable at the will of either party if it is not for a specified term."). After SPAVI's acquisition of the Potato Corner brand, it became the licensor of the Potato Corner Intellectual Property. Between December of 2021 through 2024, the months immediately preceding this action,

SPAVI engaged in a good faith and exhaustive attempt to negotiate the terms of a written license with PCJV.

Defendant Guy Koren engaged and participated in this negotiation, but was unwilling to agree to any minimally commercially viable licensing terms. Never once did Counterclaimants state that they had ownership rights to the Potato Corner Intellectual Property, and SPAVI relied on that representation. Additional evidence includes: Testimony of Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's General Counsel), Tan (Director responsible for international franchising); and emails and correspondence during the negotiation of the terms of the license agreement

vi. PCJV USA Parties' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers. As it is articulated there, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action

c. Element 3: To a party ignorant, actually, and permissibly, of the truth;

- i. This element is disputed
- ii. Nature of Dispute: legal and factual
- iii. Plaintiff's position statement: Estoppel is an affirmative defense
- iv. PCJV USA Parties' Position Statement: Equitable

estoppel is an equitable claim to be tried by the Court.

*Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*,  
856 F.Supp. 2d 1136, 1151 (2012).

v. Plaintiff's Supporting Evidence: Plaintiff's Supporting  
Evidence: Counterclaimants have no evidence of a written  
license to use SPAVI's Potato Corner Intellectual  
Property, and, as such, its rights (that it has sold to its  
franchisees) derive from what is, at best, a terminable at  
will, fully revocable license because Defendants were  
nonetheless operating Potato Corner locations, as if a  
written license existed. See *Pogrebnoy v. Russian  
Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070  
(C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018)  
("[A]n implied license, like any other contract, is  
terminable at the will of either party if it is not for a  
specified term."). After SPAVI's acquisition of the Potato  
Corner brand, it became the licensor of the Potato Corner  
Intellectual Property. Between December of 2021 through  
2024, the months immediately preceding this action,  
SPAVI engaged in a good faith and exhaustive attempt to  
negotiate the terms of a written license with PCJV.  
Defendant Guy Koren engaged and participated in this  
negotiation, but was unwilling to agree to any minimally  
commercially viable licensing terms. Never once did  
Counterclaimants state that they had ownership rights to  
the Potato Corner Intellectual Property, and SPAVI relied  
on that representation. Instead, Counterclaimant engaged

in the negotiation process. Additional evidence includes:  
Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
(Cinco's CEO), Koren, Ybanez (Plaintiff's General  
Counsel), Tan (Director responsible for international  
franchising); and emails and correspondence during the  
negotiation of the terms of the license agreement

vi. PCJV USA Parties' Supporting Evidence: SPAVI parties  
have not articulated their defense beyond what is included  
in their Answers. As it is articulated there, PCJV Parties  
cannot determine the factual basis for the defense. As  
such, the out of an abundance of caution, PCJV Parties  
incorporate by reference all of the evidence cited in  
support of their causes of action

d. Element 4: With the intention, actual or virtual, that the ignorant  
party act on it; and

- i. This element is disputed
- ii. Nature of Dispute: legal and factual
- iii. Plaintiff's position statement: Estoppel is an affirmative  
defense
- iv. PCJV USA Parties' Position Statement: Equitable  
estoppel is an equitable claim to be tried by the Court.  
*Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*,  
856 F.Supp. 2d 1136, 1151 (2012).
- v. Plaintiff's Supporting Evidence: Never once did  
Counterclaimants state that they had ownership rights to  
the Potato Corner Intellectual Property. Instead,  
Defendant Guy Koren engaged and participated in the



negotiation of the license to use the Potato Corner Intellectual Property, with the intent of having SPAVI relied on that representation that Counterclaimant did not have a license. Additional evidence includes: Testimony of Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's General Counsel), Tan (Director responsible for international franchising); and emails and correspondence during the negotiation of the terms of the license agreement

vi. PCJV USA Parties' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers. As it is articulated there, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action.

e. Element 5: That party was induced to act on it and was harmed.

i. This element is disputed

ii. Nature of Dispute: legal and factual

iii. Plaintiff's position statement: Estoppel is an affirmative defense

iv. PCJV USA Parties' Position Statement: Equitable estoppel is an equitable claim to be tried by the Court. *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*, 856 F.Supp. 2d 1136, 1151 (2012).

v. Plaintiff's Supporting Evidence: Never once did Counterclaimants state that they had ownership rights to

the Potato Corner Intellectual Property. Instead, Defendant Guy Koren engaged and participated in the negotiation of the license to use the Potato Corner Intellectual Property, with the intent of having SPAVI relied on that representation that Counterclaimant did not have a license. Guy Koren refused to, engage in reasonable and good faith negotiation. Instead, he only offered royalty rates and license fees that were more than 90% below what Koren had agreed to be reasonable licensing fees over a decade prior. Koren also repeatedly disengaged from the negotiation process, but still was utilizing the Potato Corner Intellectual Property. In the three months prior to the termination of the licensing agreement, Koren had gone radio silent, leading SPAVI to believe that it no longer was interested in negotiating a license. Therefore, SPAVI had no option, but to terminate Counterclaimants license of the Potato Corner Intellectual Property. Additional evidence includes: Testimony of Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's General Counsel), Tan (Director responsible for international franchising); and emails and correspondence during the negotiation of the terms of the license agreement

- vi. PCJV USA Parties' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers. As it is articulated there, PCJV Parties cannot determine the factual basis for the defense. As

1 such, the out of an abundance of caution, PCJV Parties  
2 incorporate by reference all of the evidence cited in  
3 support of their causes of action.

4 **4) Affirmative Defense No. 4 Failure to Mitigate Damages** (asserted by  
5 Counterclaim Defendant and Third Party Defendants as to all claims  
6 alleged against them)

7 a. Element No. 1: That the party seeking the damage award failed to  
8 use reasonable efforts to mitigate damages

9 i. This element is disputed

10 ii. Nature of Dispute: factual

11 iii. Plaintiff's Supporting Evidence: Both the JVA and AJVA  
12 contain an agreement to agree on a Master License  
13 Agreement. There was never a written license agreement  
14 between Counterclaimants and counter defendants or third  
15 party defendants for the use of the Potato Corner  
16 Intellectual Property. Counterclaimants entered into a  
17 negotiation process with Cinco, prior to SPAVI's  
18 acquisition of the Potato Corner brand and all of the  
19 Potato Corner Intellectual Property from Cinco, for the  
20 terms of a license to use the Potato Corner Intellectual  
21 Property. These negotiations began before SPAVI  
22 purchased the rights to the Potato Corner IP. So,  
23 Counterclaimants have been aware of the lack of  
24 ownership rights in the Potato Corner Intellectual  
25 Property and the non-existence of a written agreement.  
26 Then, between December of 2021 through 2024, the  
27 months immediately preceding the filing of this action,

1 SPAVI engaged in a good faith and exhaustive attempt to  
2 negotiate the terms of a written license with  
3 Counterclaimants as well. Never once did  
4 Counterclaimants state that they had ownership rights to  
5 the Potato Corner Intellectual Property, and SPAVI relied  
6 on that representation because had one been expressed,  
7 that would have been a dispute as to the ownership rights  
8 to which SPAVI would have filed this lawsuit sooner.  
9 Moreover, Guy Koren refused to engage in reasonable  
10 and good faith negotiation, which would have led to the  
11 execution of a licensing agreement. Instead, he only  
12 offered royalty rates and license fees that were more than  
13 90% below what Koren had agreed to be reasonable  
14 licensing fees over a decade prior. Koren also repeatedly  
15 disengaged from the negotiation process, but still was  
16 utilizing the Potato Corner Intellectual Property. In the  
17 three months prior to the termination of the licensing  
18 agreement, Koren had gone radio silent, leading SPAVI to  
19 believe that it no longer was interested in negotiating a  
20 license. Therefore, SPAVI had no option, but to terminate  
21 Counterclaimants license to use the Potato Corner  
22 Intellectual Property. Additional evidence includes:  
23 Notarized Deeds signed by seller and buyer; USPTO  
24 filings including Registrations and Assignments;  
25 Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
26 (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
27 Counsel), Tan (Director responsible for international  
28

franchising); May 31, 2024 Termination Letter; and emails and correspondence during the negotiation of the terms of the license agreement.

iv. Defendants' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action

b. Element No. 2: the amount, if any, by which damages have been mitigated

i. This element is disputed

ii. Nature of Dispute: factual

iii. Plaintiff's Supporting Evidence: Had Counterclaimants negotiated in good faith, SPAVI would have executed a license agreement and not terminated the licensing agreement. The amount of alleged damage resulting from the termination of the license agreement could have been mitigated. Additional evidence includes: Amended Joint Venture Agreement and Joint Venture Agreement; Testimony of Koren, Plaintiff executives Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with US operations), Tan (Director responsible for international franchising); Emails and correspondence with SPAVI, Koren, and PCJV relating to negotiations of

1 a licensing agreement for the use of the Potato Corner  
2 Intellectual Property; Financial documents of  
3 Counterclaimants; May 31, 2024 Termination Letter  
4 iv. Defendants' Supporting Evidence: SPAVI parties have  
5 not articulated their defense beyond what is included in  
6 their Answers until 7am on August 12, 2025. *See* n. 1. As  
7 it is articulated in the Answers, PCJV Parties cannot  
8 determine the factual basis for the defense. As such, the  
9 out of an abundance of caution, PCJV Parties incorporate  
10 by reference all of the evidence cited in support of their  
11 causes of action

12 5) **Affirmative Defense No. 5:** Immunity (asserted by SPAVI as to all  
13 claims alleged against it)

14 a. Element No. 1 – That Counterclaim Defendant had a legitimate  
15 economic interest and thus shielded from liability in pursuit of its own  
16 lawful business interests

17 i. This element is disputed

18 ii. Nature of Dispute: Legal and factual

19 iii. PCJV USA Parties' Position Statement: PCJV USA  
20 Parties cannot articulate a response to this affirmative  
21 defense because SPAVI Parties did not provide their  
22 statement of what the applicable elements are or their  
23 positions regarding those elements. They have otherwise  
24 not articulated how this affirmative defense applies  
25 beyond their Answers.

26 iv. Plaintiff's Supporting Evidence: In December 2021,  
27 SPAVI entered into a transaction to acquire the Potato

1 Corner Intellectual Property, including the Potato Corner  
2 Standard Characters Mark and the Potato Corner Logo  
3 Mark, and all of the rights thereto, from Cinco. That  
4 transaction closed during the first half of 2022. As such,  
5 SPAVI had an economic interest in the Potato Corner  
6 Intellectual Property. Additional evidence includes:  
7 Notarized Deeds signed by seller and buyer; USPTO  
8 filings including Registrations and Assignments,  
9 testimony of Gregorio (Plaintiff's CEO), Magsaysay  
10 (Cinco's CEO), Tan (Director responsible for  
11 international franchising)

12 v. PCJV USA Parties' Supporting Evidence: SPAVI parties  
13 have not articulated their defense beyond what is included  
14 in their Answers. As it is articulated there, PCJV Parties  
15 cannot determine the factual basis for the defense. As  
16 such, the out of an abundance of caution, PCJV Parties  
17 incorporate by reference all of the evidence cited in  
18 support of their causes of action.

19 6) **Affirmative Defense No. 6**: Privilege (asserted by SPAVI as to all claims  
20 alleged against it)

21 a. **Element No. 1** – That Counterclaim Defendant had a legitimate  
22 economic interest

23 i. This element is disputed

24 ii. Nature of Dispute: legal and factual

25 iii. **Defendants' Position Statement**: SPAVI parties have not  
26 articulated their defense beyond what is included in their  
27 Answers. *See* n. 1. As it is articulated in the Answers,

PCJV Parties cannot determine the legal basis for the defense

iv. Plaintiff's Supporting Evidence: In December 2021, SPAVI entered into a transaction to acquire the Potato Corner Intellectual Property, including the Potato Corner Standard Characters Mark and the Potato Corner Logo Mark, and all of the rights thereto, from Cinco. That transaction closed during the first half of 2022. As such, SPAVI had an economic interest in the Potato Corner Intellectual Property. Additional evidence includes: Notarized Deeds signed by seller and buyer; USPTO filings including Registrations and Assignments, testimony of Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO), Tan (Director responsible for international franchising)

v. Defendants' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See n. 1.* As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action

b. Element No. 2 – That Counterclaim Defendant acted only to protect its own economic interest.

i. This element is disputed

ii. Nature of Dispute: legal and factual



1                   iii. Defendants' Position Statement: SPAVI parties have not  
2                   articulated their defense beyond what is included in their  
3                   Answers. *See* n. 1. As it is articulated in the Answers,  
4                   PCJV Parties cannot determine the legal basis for the  
5                   defense.

6                   iv. Plaintiff's Supporting Evidence: Counterclaimant have no  
7                   evidence of a written license to use SPAVI's Potato  
8                   Corner Intellectual Property, and, as such, its rights (that  
9                   it has sold to its franchisees) derive from what is, at best,  
10                  a terminable at will, fully revocable license because  
11                  Defendants were nonetheless operating Potato Corner  
12                  locations, as if a written license existed. *See Pogrebnoy v.*  
13                  *Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d  
14                  1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th  
15                  Cir. 2018) ("[A]n implied license, like any other contract,  
16                  is terminable at the will of either party if it is not for a  
17                  specified term."). After SPAVI's acquisition of the Potato  
18                  Corner brand, it became the licensor of the Potato Corner  
19                  Intellectual Property. Between December of 2021 through  
20                  2024, the months immediately preceding this action,  
21                  SPAVI engaged in a good faith and exhaustive attempt to  
22                  negotiate the terms of a written license with PCJV.  
23                  Defendant Guy Koren engaged and participated in this  
24                  negotiation, but was unwilling to agree to any minimally  
25                  commercially viable licensing terms. Therefore, Plaintiff  
26                  had no option to terminate the license of the Potato  
27                  Corner Intellectual Property. Additional evidence

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includes: Testimony of Koren, Plaintiff executives Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with US operations), Tan (Director responsible for international franchising), Magsaysay (Cinco's CEO); Emails and correspondence with SPAVI, Koren, and PCJV relating to negotiations of a licensing agreement for the use of the Potato Corner Intellectual Property; Amended Joint Venture Agreement; Franchise Agreements; FDDs; Trial Exhibit 29 (May 31, 2024 Termination)

v. Defendants' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action.

c. Element No. 3– That Counterclaim Defendant acted reasonably and in good faith to protect it.

i. This element is disputed

ii. Nature of Dispute: legal and factual

iii. Defendants' Position Statement: SPAVI parties have not articulated their defense beyond what is included in their Answers. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the legal basis for the defense.

iv. Plaintiff's Supporting Evidence: Counterclaimant have no evidence of a written license to use SPAVI's Potato Corner Intellectual Property, and, as such, its rights (that it has sold to its franchisees) derive from what is, at best, a terminable at will, fully revocable license because Defendants were nonetheless operating Potato Corner locations, as if a written license existed. *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018) ("[A]n implied license, like any other contract, is terminable at the will of either party if it is not for a specified term."). After SPAVI's acquisition of the Potato Corner brand, it became the licensor of the Potato Corner Intellectual Property. Between December of 2021 through 2024, the months immediately preceding this action, SPAVI engaged in a good faith and exhaustive attempt to negotiate the terms of a written license with PCJV. Defendant Guy Koren engaged and participated in this negotiation, but was unwilling to agree to any minimally commercially viable licensing terms. Therefore, Plaintiff had no option to terminate the license of the Potato Corner Intellectual Property. Additional evidence includes: Testimony of Koren, Plaintiff executives Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with US operations), Tan (Director responsible for international franchising), Magsaysay (Cinco's CEO); Emails and correspondence with SPAVI,

Koren, and PCJV relating to negotiations of a licensing agreement for the use of the Potato Corner Intellectual Property; Amended Joint Venture Agreement; Franchise Agreements; FDDs; Trial Exhibit 29 (May 31, 2024 Termination)

v. Defendants' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action.

7) **Affirmative Defense No. 7:** Unclean Hands (asserted by Counterclaim Defendant and Third Party Defendants as to all claims alleged against them)

a. Element No. 1: Counterclaimant engaged in inequitable and/or unethical behavior that bars it from seeking relief

i. This element is disputed

ii. Nature of Dispute: factual

iii. Plaintiff's Supporting Evidence: Counterclaimants have at best, a terminable at will, fully revocable license because Defendants were nonetheless operating Potato Corner locations, as if a written license existed. *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018) ("[A]n implied license, like any other contract,

1 is terminable at the will of either party if it is not for a  
2 specified term.”). Despite using the Potato Corner  
3 Intellectual Property for over a decade, Counterclaimants  
4 have never once paid a single cent of a licensing for its  
5 use to Cinco nor SPAVI. Counterclaimants have used  
6 Cinco’s, and after the asset purchase, SPAVI’s trademark  
7 without compensation to either party. Additional evidence  
8 includes: Financial statements of Counterclaimants  
9 evidence that no licensing fees have ever been paid;  
10 Notarized Deeds signed by seller and buyer; USPTO  
11 filings including Registrations and Assignments;  
12 Testimony of Gregorio (Plaintiff’s CEO), Magsaysay  
13 (Cinco’s CEO), Koren, Ybanez (Plaintiff’s General  
14 Counsel), Tan (Director responsible for international  
15 franchising), Concepcion (Plaintiff’s COO charged with  
16 US operations); emails and correspondence with Cinco,  
17 SPAVI, Koren, and PCJV relating to negotiations of a  
18 licensing agreement

19 iv. Defendants’ Supporting Evidence: SPAVI parties have  
20 not articulated their defense beyond what is included in  
21 their Answers until 7am on August 12, 2025. *See* n. 1. As  
22 it is articulated in the Answers, PCJV Parties cannot  
23 determine the factual basis for the defense. As such, the  
24 out of an abundance of caution, PCJV Parties incorporate  
25 by reference all of the evidence cited in support of their  
26 causes of action. Also, the state court preliminary  
27 injunction (holding that Cinco Corporation was not likely  
28

to prevail on prior claims of wrongdoing); confidential settlement communications do not support allegations; Cinco Corporation's settlement and release of prior allegations of wrongdoing.

8) **Affirmative Defense No. 8:** Waiver (asserted by Counterclaim Defendant and Third Party Defendants as to all claims alleged against them)

a. **Element No. 1:** Through implied and/or express conduct, Counterclaimants knowingly waived a valid right, privilege, advantage, or benefit allegedly conferred upon it and its attempt to enforce that right, privilege, advantage, or benefit is thus barred.

i. This element is disputed

ii. Nature of Dispute: factual

vii. **Plaintiff's Supporting Evidence:** Both the JVA and AJVA contain an agreement to agree on a Master License Agreement. There was never a written license agreement between Counterclaimants and counter defendants or third party defendants. Counterclaimant entered into a negotiation process with Cinco, prior to SPAVI's acquisition of the Potato Corner brand and all of the Potato Corner Intellectual Property from Cinco, for the terms of a license to use the Potato Corner Intellectual Property. These negotiations began before SPAVI purchased the rights to the Potato Corner IP. So, Counterclaimants have been aware of the lack of ownership rights in the Potato Corner Intellectual Property and the non-existence of a written agreement. Then, between December of 2021 through 2024, the

1 months immediately preceding the filing of this action,  
2 SPAVI engaged in a good faith and exhaustive attempt to  
3 negotiate the terms of a written license with  
4 Counterclaimants as well. Never once did  
5 Counterclaimants state that they had ownership rights to  
6 the Potato Corner Intellectual Property, and SPAVI relied  
7 on that representation because had one been expressed,  
8 that would have been a dispute as to the ownership rights  
9 to which SPAVI would have filed this lawsuit sooner.  
10 Instead, Counterclaimants and Counter Defendants  
11 continued to negotiate the terms of a license to use the  
12 Potato Corner Intellectual Property. Additional evidence  
13 includes: Notarized Deeds signed by seller and buyer;  
14 USPTO filings including Registrations and Assignments;  
15 Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
16 (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
17 Counsel), Tan (Director responsible for international  
18 franchising); and emails and correspondence during the  
19 negotiation of the terms of the license agreement.

20 iii. Defendants' Supporting Evidence: SPAVI parties have  
21 not articulated their defense beyond what is included in  
22 their Answers until 7am on August 12, 2025. *See* n. 1. As  
23 it is articulated in the Answers, PCJV Parties cannot  
24 determine the factual basis for the defense. As such, the  
25 out of an abundance of caution, PCJV Parties incorporate  
26 by reference all of the evidence cited in support of their  
27 causes of action. The state court preliminary injunction

(enjoining Cinco Corporation from interfering with PCJV's President's control over Potato Corner in the United States and communicating with its franchisees); confidential settlement communications do not support any waiver, as Defendants never waived any rights but were trying to settle disputes; Cinco Corporation's settlement and release of prior allegations and transfer of the very interests, rights and obligations over which the parties are now litigating.

- 9) **Affirmative Defense No. 9:** Comparative Fault (asserted by Counterclaim Defendant SPAVI as to the negligent interference with prospective economic relations claim)
- a. Element No. 1: That Counterclaimant was negligent
- i. This element is disputed
  - ii. Nature of Dispute: factual
  - iii. Plaintiff's Supporting Evidence: Both the JVA and AJVA contain an agreement to agree on a Master License Agreement. As such, there was no written license agreement. Counterclaimant entered into a negotiation process with Cinco, prior to SPAVI's acquisition of the Potato Corner brand and all of the Potato Corner Intellectual Property from Cinco, for the terms of a license to use the Potato Corner Intellectual Property. These negotiations began before SPAVI purchased the rights to the Potato Corner IP. So, Counterclaimants have been aware of the lack of ownership rights in the Potato Corner Intellectual Property and the non-existence of a



1 written agreement. Then, between December of 2021  
2 through 2024, the months immediately preceding this  
3 action, SPAVI engaged in a good faith and exhaustive  
4 attempt to negotiate the terms of a written license with  
5 PCJV as well. Never once did Counterclaimants state that  
6 they had ownership rights to the Potato Corner  
7 Intellectual Property, and SPAVI relied on that  
8 representation because had one been expressed, that  
9 would have been a dispute as to the ownership rights to  
10 which SPAVI would have filed this lawsuit sooner.  
11 Moreover, Guy Koren could have, but refused to, engage  
12 in reasonable and good faith negotiation. Instead, he only  
13 offered royalty rates and license fees that were more than  
14 90% below what Koren had agreed to be reasonable  
15 licensing fees over a decade prior. Koren also repeatedly  
16 disengaged from the negotiation process, but still was  
17 utilizing the Potato Corner Intellectual Property.  
18 Additional evidence includes: Notarized Deeds signed by  
19 seller and buyer; USPTO filings including Registrations  
20 and Assignments; Testimony of Gregorio (Plaintiff's  
21 CEO), Magsaysay (Cinco's CEO), Koren, Ybanez  
22 (Plaintiff's General Counsel), Tan (Director responsible  
23 for international franchising); and emails and  
24 correspondence during the negotiation of the terms of the  
25 license agreement.

26 iv. Defendants' Supporting Evidence: SPAVI parties have  
27 not articulated their defense beyond what is included in  
28

1 their Answers until 7am on August 12, 2025. *See* n. 1. As  
2 it is articulated in the Answers, PCJV Parties cannot  
3 determine the factual basis for the defense. As such, the  
4 out of an abundance of caution, PCJV Parties incorporate  
5 by reference all of the evidence cited in support of their  
6 causes of action. The state court preliminary injunction  
7 (enjoining Cinco Corporation from interfering with  
8 PCJV's President's control over Potato Corner in the  
9 United States and communicating with its franchisees); at  
10 all relevant times Defendants exercised control over  
11 Potato Corner in the United States and did not change the  
12 status quo between the parties, including in dealings with  
13 Plaintiff and Plaintiff's predecessor.

14 b. Element No. 2: That Counterclaimant's negligence was a substantial  
15 factor in causing its harm.

16 i. This element is disputed

17 ii. Nature of Dispute: factual

18 iii. Plaintiff's Supporting Evidence: Guy Koren could have,  
19 but refused to, engage in reasonable and good faith  
20 negotiation. Instead, he only offered royalty rates and  
21 license fees that were more than 90% below what Koren  
22 had agreed to be reasonable licensing fees over a decade  
23 prior. Koren also repeatedly disengaged from the  
24 negotiation process, but still was utilizing the Potato  
25 Corner Intellectual Property. In light of the two year  
26 negotiation process that went nowhere, and  
27 Counterclaimant no furnishing any consideration

1                   whatsoever in exchange for the use of the Potato Corner  
2                   Intellectual Property, SPAVI concluded that it exhausted  
3                   all efforts to negotiate a license agreement with  
4                   Counterclaimants. As such, SPAVI had no choice by to  
5                   terminate Counterclaimants licensing agreement.  
6                   Additional supporting evidence includes: Notarized  
7                   Deeds signed by seller and buyer; USPTO filings  
8                   including Registrations and Assignments; Testimony of  
9                   Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO),  
10                  Koren, Ybanez (Plaintiff's General Counsel), Tan  
11                  (Director responsible for international franchising); May  
12                  31, 2024 Termination Letter; and emails and  
13                  correspondence during the negotiation of the terms of the  
14                  license agreement.

- 15                  iv. Defendants' Supporting Evidence: SPAVI parties have  
16                  not articulated their defense beyond what is included in  
17                  their Answers until 7am on August 12, 2025. *See* n. 1. As  
18                  it is articulated in the Answers, PCJV Parties cannot  
19                  determine the factual basis for the defense. As such, the  
20                  out of an abundance of caution, PCJV Parties incorporate  
21                  by reference all of the evidence cited in support of their  
22                  causes of action. The state court preliminary injunction  
23                  (enjoining Cinco Corporation from interfering with  
24                  PCJV's President's control over Potato Corner in the  
25                  United States and communicating with its franchisees); at  
26                  all relevant times Defendants exercised control over  
27                  Potato Corner in the United States and did not change the

status quo between the parties, including in dealings with  
Plaintiff and Plaintiff's predecessor

10) **Affirmative Defense No. 10:** Lack or Inadequacy of Consideration  
(asserted by Counterclaim Defendant and Third Party Defendants as to all  
claims alleged against them)

a. **Element No. 1:** Counterclaimant has failed or refused to provide  
anything of value in exchange for the use of SPAVI's license to use  
the Potato Corner Intellectual Property

i. This element is disputed

ii. Nature of Dispute: factual

iii. **Plaintiff's Supporting Evidence:** Despite using the Potato  
Corner Intellectual Property for over a decade,  
Counterclaimants have never once paid a single cent of a  
licensing fee for its use to Cinco nor SPAVI.  
Counterclaimants have used Cinco's, and after the asset  
purchase, SPAVI's trademark without compensation to  
either party. Additional evidence includes: Financial  
statements of Counterclaimants evidence that no licensing  
fees have ever been paid; Notarized Deeds signed by  
seller and buyer; USPTO filings including Registrations  
and Assignments; Testimony of Gregorio (Plaintiff's  
CEO), Magsaysay (Cinco's CEO), Koren, Ybanez  
(Plaintiff's General Counsel), Tan (Director responsible  
for international franchising), Concepcion (Plaintiff's  
COO charged with US operations); JVA and AJVA;  
emails and correspondence with Cinco, SPAVI, Koren,  
and PCJV relating to negotiations of a licensing

agreement

iv. Defendants' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action

11) **Affirmative Defense No. 11:** Abandonment or Mutual Recession of Contract (asserted by Counterclaim Defendant and Third Party Defendants as to all claims alleged against them)

a. **Element No. 1:** Counterclaimants license to use the Potato Corner Intellectual Property was effectively terminated by mutual consent or that Counterclaimants actions led SPAVI to believe that it was abandoned.

i. This element is disputed.

ii. Nature of Dispute: factual

iii. **Plaintiff's Supporting Evidence:** Counterclaimants have no evidence of a written license to use SPAVI's Potato Corner Intellectual Property, and, as such, its rights (that it has sold to its franchisees) derive from what is, at best, a terminable at will, fully revocable license because Defendants were nonetheless operating Potato Corner locations, as if a written license existed. *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th

1 Cir. 2018) (“[A]n implied license, like any other contract,  
2 is terminable at the will of either party if it is not for a  
3 specified term.”). After SPAVI’s acquisition of the Potato  
4 Corner brand, it became the licensor of the Potato Corner  
5 Intellectual Property. Between December of 2021 through  
6 2024, the months immediately preceding this action,  
7 SPAVI engaged in a good faith and exhaustive attempt to  
8 negotiate the terms of a written license with PCJV.  
9 Defendant Guy Koren engaged and participated in this  
10 negotiation, but was unwilling to agree to any minimally  
11 commercially viable licensing terms. Moreover, Guy  
12 Koren refused to, engage in reasonable and good faith  
13 negotiation. Instead, he only offered royalty rates and  
14 license fees that were more than 90% below what Koren  
15 had agreed to be reasonable licensing fees over a decade  
16 prior. Koren also repeatedly disengaged from the  
17 negotiation process, but still was utilizing the Potato  
18 Corner Intellectual Property. In the three months prior to  
19 the termination of the licensing agreement, Koren had  
20 gone radio silent, leading SPAVI to believe that it no  
21 longer was interested in negotiating a license. Therefore,  
22 SPAVI had no option, but to terminate Countnerclaimants  
23 license of the Potato Corner Intellectual Property.  
24 Additional evidence includes: Testimony of Koren,  
25 Plaintiff executives Gregorio (Plaintiff’s CEO),  
26 Concepcion (Plaintiff’s COO charged with US  
27 operations), Tan (Director responsible for international

franchising), Magsaysay (Cinco's CEO); Emails and correspondence with SPAVI, Koren, and PCJV relating to negotiations of a licensing agreement for the use of the Potato Corner Intellectual Property; Amended Joint Venture Agreement; Franchise Agreements; FDDs; Trial Exhibit 29 (May 31, 2024 Termination)

iv. Defendants' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action. Defendants settled with Plaintiff's predecessor and acquired all of Plaintiff's predecessor's interests in PCJV and all "attached" rights; it did not abandon any rights or obligations under PCJV USA, LLC's governing documents.

**IV. Adjudication of Causes of Action, Counter Claims, Third Party Claims, and Affirmative Defenses Not to be Decided by a Jury**

The parties request adjudication of the following causes of action, counter claims, third party claims, and affirmative defenses in the following manner and at the following time:

~~1) At the conclusion of trial, Plaintiff will seek a permanent injunction and declaratory relief with this Court, as well as for additional relief under the Lanham Act reserved for this Court. At that time, depending on the jury's~~

1 ~~reaction to the § 1125 unfair competition claim, Plaintiff will present that~~  
2 ~~equitable claim to this Court. Plaintiff will also present at that time its~~  
3 ~~affirmative defense of “One Who Seeks Equity Must Do Equity.”~~

4 ~~2)1)~~ PCJV USA Parties request the Court to adjudicate PCJV USA Parties’  
5 following causes of action at the conclusion of trial: (1) Declaratory  
6 Relief; and (2) Violations of Business & Professions Code §§ 17200, et  
7 *seq*

8 ~~3)2)~~ PCJV USA Parties request the Court to adjudicate PCJV USA Parties’  
9 following affirmative defenses at the conclusion of trial: (1) failure to  
10 state a claim; (2) consent/acquiescence, ratification, promissory estoppel,  
11 equitable estoppel, and judicial estoppel; (3) unclean hands; (4) laches, (5)  
12 fraud on USPTO, (6) authorized use, (7) public availability of trade  
13 secrets, and (8) lack of at will license agreement

14 The parties abandoned the following claims:

- 15 1) PCJV USA Parties abandon their Accounting cause of action.  
16 2) SPAVI Parties are no longer pursuing the claim for unregistered  
17 trademarks.

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26 Dated: August ~~1222~~, 2025

/s/ Matthew Follett  
Michael D. Murphy  
Matthew Follett



Jessica Nwasike  
Fox Rothschild LLP  
*Attorneys for Plaintiff and  
Counterclaim Defendant, and Third  
Party Defendants*

Dated: August 12, 2025

Arash Beral  
Todd M. Malynn  
Blank Rome LLP  
Attorneys for Defendants,  
Counterclaimants, and Third Party  
Plaintiffs

DATED: August 22, 2025 BLANK ROME LLP

By: /s/ Todd M. Malynn  
Todd M. Malynn  
Arash Beral  
Jamison T. Gilmore  
Attorneys for Defendants, Counterclaimants,  
and Third Party Plaintiffs PCIV USA, LLC,  
PCI TRADING LLC, POTATO CORNER,  
LA GROUP, LLC, GK CAPITAL GROUP,  
LLC, NKM CAPITAL GROUP, LLC and  
GUY KOREN, and Defendants J & K  
AMERICANA, LLC, J&K LAKEWOOD,  
LLC, J&K OAKRIDGE, LLC, J&K  
VALLEY FAIR, LLC, J & K ONTARIO,  
LLC, J&K PC TRUCKS, LLC, HLK  
MILPITAS, LLC, and GK CERRITOS,  
LLC

**ATTESTATION OF E-FILED SIGNATURE**

Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i), I, Todd M. Malynn, hereby attest that I have obtained concurrence in the filing of this document from the other signatories to this document. I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

DATED: August 22, 2025

**BLANK ROME LLP**

By: Todd M. Malynn

Todd M. Malynn

Arash Beral

Jamison T. Gilmore

Attorneys for Defendants, Counterclaimants,  
and Third Party Plaintiffs PCJV USA, LLC,  
PCI TRADING LLC, POTATO CORNER,  
LA GROUP, LLC, GK CAPITAL GROUP,  
LLC, NKM CAPITAL GROUP, LLC and  
GUY KOREN, and Defendants J & K  
AMERICANA, LLC, J&K LAKEWOOD,  
LLC, J&K OAKRIDGE, LLC, J&K  
VALLEY FAIR, LLC, J & K ONTARIO,  
LLC, J&K PC TRUCKS, LLC, HLK  
MILPITAS, LLC, and GK CERRITOS,  
LLC

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on ~~August 12, 2025~~, August 22, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court's Electronic Case Filing (ECF-filing) system. I further certify that all ~~counsel for all parties to this action~~ participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on August 22, 2025.

~~Dated: August 12, 2025~~

**FOX ROTHSCHILD LLP**

Michael D. Murphy  
Attorneys for Plaintiff and Counterclaim  
Defendant SHAKEY'S PIZZA ASIA  
VENTURES, INC. and Third Party  
Defendants CINCO CORPORATION,  
PC INTERNATIONAL PTE LTD., and  
SPAVI INTERNATIONAL USA, INC.

By: /s/AJ Cruickshank